

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 TEXARKANA DIVISION

4 C.A. NO. 5:96CV91

5 THE STATE OF TEXAS

6 VS

7 THE AMERICAN TOBACCO COMPANY; R.J. REYNOLDS
8 TOBACCO COMPANY; BROWN & WILLIAMSON TOBACCO
9 CORPORATION; B.A.T. INDUSTRIES, P.L.C.; PHILIP
10 MORRIS, INC.; LIGGETT GROUP, INC.; LORILLARD
11 TOBACCO COMPANY, INC.; UNITED STATES TOBACCO
12 COMPANY; HILL & KNOWLTON, INC.; THE COUNCIL
13 FOR TOBACCO RESEARCH - USA, INC. (Successor to
14 Tobacco Institute Research Committee); and THE
15 TOBACCO INSTITUTE, INC.

16 VIDEOTAPED

17 ORAL DEPOSITION

18 OF

19 CHARLES P. ELLIOTT, JR.

20 September 20, 1997

21

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D15803

1 **ANSWERS AND DEPOSITION OF CHARLES**
2 P. ELLIOTT, JR., produced as a witness at the
3 instance of the Plaintiff, taken in the
4 above-styled and -numbered cause on the 20th
5 day of September, 1997, before Ronald R. Cope,
6 a Certified Shorthand Reporter in and for the
7 State of Texas, Registered Professional
8 Reporter and Certified Realtime Reporter, at
9 the offices of Maroney, Crowley, Bankston,
10 Richardson & Hull, L.L.P., located at 701
11 Brazos, Suite 1500, in the City of Austin,
12 County of Travis and State of Texas, in
13 accordance with the Federal Rules of Civil
14 Procedure and the agreements hereinafter set
15 forth.

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A P P E A R A N C E S

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P R O C E E D I N G S

THE VIDEOGRAPHER: We're on
the record.

CHARLES P. ELLIOTT, JR.,
the witness hereinbefore named, being of
lawful age and being first duly cautioned and
sworn in the above cause, testified on his
oath as follows:

EXAMINATION

BY MR. SCHWARTZ:

Q. Could you state your name, sir.

A. Charles P. Elliott, Jr.

Q. Mr. Elliott, how are you employed?

A. I teach political science at Texas
A & M University at Commerce.

Q. My name is Bob Schwartz. We met
for the first time just a few minutes ago, did
we not?

A. That's correct.

Q. You understand that I represent,
along with other lawyers, the State of Texas
in the lawsuit that's been brought against the
tobacco industry?

A. Yes, I do.

Q. And I'm basically on the other

04 1 side of this case than the side that you're
2 testifying for today.)

3 A. I understand that.

4 Q. Let's get some background
11:04 5 information on how it was that you came to be
6 here today. Who is it that first contacted
7 you and when did they contact you?

8 A. Michael Hull contacted me, I
9 think, in about January of this year.

10 Q. And what did Mr. Hull tell you
11 when he first contacted you?

12 A. He told me that he was involved in
13 the suit and was looking for somebody who
14 would help to develop a kind of a profile or
11:04 15 history of Texas public policy with regard to
16 tobacco.

17 Q. Is that assignment -- is that the
18 assignment that he basically asked you to take
19 on?

20 A. Yes.

21 Q. And has that assignment, if we can
22 call it an assignment, changed any from that
23 time until now?

24 A. No.

25 Q. I noticed in the disclosure

11:05 1 materials that you provided prior to your
2 deposition that a lot of them deal with
3 legislation and, more specifically, excise
4 taxes.

11:05 5 A. That's correct.

6 Q. Is there any other area that you
7 focused more on in your assignment regarding
8 Texas public policy regarding tobacco in Texas
9 other than excise taxes?

11:05 10 A. That I focused on more?

11 Q. Yes, sir.

12 A. I paid some attention to
13 regulation, and I also took a look at two
14 other areas of policy that I thought were
11:06 15 significant: Texas Department of Public
16 Health and the public school curriculum.

17 Q. The public school curriculum to
18 see what type of programs they had for
19 educating youth?

11:06 20 A. Yes.

21 Q. Have you ever given your
22 deposition before?

23 A. No.

24 Q. Having met with your attorney this
11:06 25 morning before the deposition, you've probably

11:06 1 been told these things, but I'm going to go
2 over them since you've not given a deposition
3 before, all right?

4 A. That's fine.

11:06 5 Q. I'm here to find out about your
6 opinions that you're going to offer as an
7 expert witness in this case. I am not here to
8 trick you in any way. I'm here to learn about
9 you and what it is your testimony will be at
11:06 10 trial, all right?

11 A. I understand.

12 Q. The court reporter is taking this
13 deposition down. You're not recording, are
14 you? You don't have a recorder on? He's
11:07 15 taking it down word for word. Every word
16 that's said in this deposition. And also it's
17 on videotape as well and I'm sure the
18 videographer has an audio recording going at
19 the same time.

11:07 20 A. I understand.

21 Q. But you've got the right to read
22 and sign your deposition and make sure that
23 the way it's printed up is exactly the way you
24 spoke it or said the matter of the subject.

11:07 25 A. All right.

11:07 1 Q. -- All right. If you need to confer
2 with your attorney or if you want to take a
3 break at any time, all you need to do is tell
4 me.

11:07 5 A. I will. Thanks.

6 Q. Most importantly, if for any
7 reason you do not understand one of my
8 questions, you must tell me you don't
9 understand it, okay?

11:07 10 A. I will.

11 Q. I will be happy to rephrase it,
12 repeat it, break it down, whatever it takes
13 for you to fully understand what it is I'm
14 asking you.

11:07 15 A. Okay.

16 Q. The danger is that you might
17 answer a question that you didn't understand
18 and we're all going to assume that you
19 understood it because you didn't say
20 anything. If you give an answer that later
21 you want to say is inappropriate, that's not
22 going to fly very well or easily, okay?

23 A. I understand.

24 Q. All right. Last but not least,
25 the court reporter can only take one of us

:08 1 speaking at a time. I know you're going to
2 anticipate my full question before I speak it
3 and there are times where I'm going to
4 anticipate what your answer is and try to go
11:08 5 on with the next question. We both need to
6 try to speak one at a time.

7 A. I understand that.

8 Q. All right. And verbal responses
9 are extremely important. Head nods don't come
11:08 10 across very well and neither do uh-huhs and
11 uh-uhs.

12 A. That's fine.

13 Q. Okay? Tell me about your
14 experience dealing with Texas Public Health
11:08 15 Department, or any of the Texas Public Health
16 agencies.

17 A. My dealings with them have been in
18 terms of published materials and public
19 records.

20 Q. Prior to your involvement in this
21 case?

22 A. Never.

23 Q. So the only time that you got
24 involved in their matters, namely the Texas
11:09 25 Department of Public Health, was in doing some

11:09 11 research for your testimony?

2 A. Yes, sir.

3 Q. What about the public school
4 curriculum? Had you had any involvement with
11:09 5 the public school curriculum?

6 A. No.

7 Q. The only reason you investigated
8 that or delved into that was as research for
9 your testimony today?

11:09 10 A. I have had some tangential
11 relationship with that because the institution
12 where I teach trains lots of public school
13 teachers.

14 Q. Did you have any particular
11:10 15 knowledge or special knowledge about the
16 public school curriculum on children and
17 smoking before you took the assignment in this
18 case?

19 A. No.

20 Q. Would it be fair to say that your
21 research into the public school curriculum was
22 centered solely on youth and smoking?

23 A. Yes.

24 Q. What about regulation? What
11:10 25 aspect of regulation did you look at in

10 1 preparation for your testimony?

2 A. I looked at the regulatory
3 statutes of the state and some of the tax
4 statutes.

11:10 5 Q. When you say regulatory statutes,
6 what areas are you referring to?

7 A. Primarily revenue taxation.

8 Q. Is it your understanding that
9 Texas has -- has consistently throughout the
11:11 10 years dedicated funds from tax dollars to
11 particular programs?

12 A. Clarify that.

13 Q. In what way?

14 A. What kinds of particular programs?

11:11 15 Q. I'm just making a general
16 statement.

17 A. General?

18 Q. Yes, sir. Not to any particular
19 program. But it's your understanding that
11:11 20 when a -- when a tax is implemented by the
21 legislature, that those funds are dedicated to
22 certain programs or certain areas or certain
23 accounts or whatever?

24 A. That is often the case..

11:11 25 Q. And do you know anything about the

11:11 1 dedication of those funds separate and apart
2 from what you might have learned in your
3 research here today, or your research that is
4 backing up your testimony today?

11:12 5 A. Yes.

6 Q. What is it that you know?

7 A. Basically the dedication of the
8 motor fuels tax.

9 Q. What do you know about that?

11:12 10 A. That it's dedicated 25 percent to
11 education and 75 percent to the highway
12 program.

13 Q. So anytime that there was a
14 dedication of any tax revenue to education,
11:12 15 you might have known about that or become
16 aware of it?

17 A. No.

18 Q. Is it your understanding that any
19 tobacco taxes that have been paid have been
11:12 20 dedicated to education?

21 A. Some have.

22 Q. Do you know the years that any of
23 those types --

24 A. Up until recently I think there
11:12 25 was a dedication of, oh, I don't know, 8 1/2,

12 1 9 percent of tobacco tax.

2 Q. Are you aware and do you have any
3 particular expertise in the political arena
4 and how the legislature actually works?

11:13 5 A. Yes.

6 Q. And where do you get that
7 information and understanding from?

8 A. Some reading and some work with
9 members of the legislature as people that I
11:13 10 have helped to campaign for office and people
11 who have served in the legislature with whom I
12 have consulted on some research that I've done
13 in some other instances.

14 Q. Which university are you at right
11:13 15 now?

16 A. Texas A & M Commerce, formerly
17 East Texas State.

18 Q. And do you conduct any lobby
19 activities on behalf of the university?

11:13 20 A. No.

21 Q. When is the last -- have you ever
22 done that --

23 A. No.

24 Q. -- on behalf of any entity or
11:13 25 university?

11:13 1 A. No.

2 Q. Have you ever gone over to the
3 capital while the legislature was in session
4 to talk with any representative or senator
11:13 5 about any particular interest?

6 A. Yes.

7 Q. And when would that have been?

8 A. I guess the last time I had
9 conversation was about the concealed handgun
11:14 10 bill that Representative Oakley had
11 introduced.

12 Q. Which side were you on on that
13 particular piece of legislation?

14 A. I was opposed to it.

11:14 15 Q. Were you there in an official
16 capacity or personally as a citizen?

17 A. Personal.

18 Q. Have you ever appeared in any
19 legislator's office on a particular piece of
11:14 20 legislation or special interest or in some
21 official capacity such as for a university?

22 A. No.

23 Q. How many other times have you
24 visited with a legislator on legislation on a
11:15 25 personal matter?

11:15 1 A. I don't know. Lots of times.

2 Q. In the capital?

3 A. Not often in the capital. Usually
4 when my state representative or my state
11:15 5 senator was at home in the district.

6 Q. Where is it that you live?

7 A. [DELETED]

8 Q. And who is your state rep now?

9 A. Keith Oakley.

11:15 10 Q. And who is your state senator?

11 A. David Cane.

12 Q. In preparation for your testimony
13 in this case, have you had any discussions
14 either with Mr. Oakley or Mr. Cane about the
11:15 15 Texas legislature and tobacco?

16 A. No.

17 Q. Have you had any discussions with
18 them at all about tobacco?

19 A. No.

11:15 20 Q. Are you a smoker?

21 A. No.

22 Q. Have you ever smoked?

23 A. Yes.

24 Q. How long did you smoke?

11:15 25 A. Oh, a year or two, perhaps.

- 11:16 1 Q. As a young man?
- 2 A. As a child.
- 3 Q. How old were you when you started?
- 4 A. Ten, eleven years old.
- 11:16 5 Q. Do you remember why you started?
- 6 A. It was fun.
- 7 Q. Did you have some friends that
- 8 smoked or did you --
- 9 A. I had friends.
- 11:16 10 Q. Did your parents smoke?
- 11 A. My father did.
- 12 Q. Had your mother ever smoked?
- 13 A. No.
- 14 Q. Do you remember anything about the
- 11:16 15 two-year smoking experience you had, such as
- 16 which brands you smoked?
- 17 A. No.
- 18 Q. Do you remember whether it made
- 19 you feel good or relaxed?
- 11:16 20 A. No.
- 21 Q. Why did you do it other than the
- 22 fact that everybody else was doing it?
- 23 A. That's probably why.
- 24 Q. Didn't make you feel good
- 25 necessarily?

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:17 #1 A. I don't recall that it did.

2 Q. Do you recall that it made you
3 feel more mature or maybe looked more mature?

4 A. No.

11:17 5 Q. And are you married today?

6 A. Yes.

7 Q. Does your wife smoke?

8 A. No.

9 Q. Do you have children?

11:17 10 A. Yes.

11 Q. Do they smoke?

12 A. One does, I think.

13 Q. And how long has that child been
14 smoking?

11:17 15 A. I don't know.

16 Q. The child that smokes, what does
17 he or she do for a living?

18 A. A student.

19 Q. Where is he or she is student?

11:17 20 A. Texas A & M University Commerce.

21 Q. Are you teaching political science
22 at A & M?

23 A. Yes.

24 Q. And you have done that at least

11:18 25 since 1973?

11:18 1 A. That's correct.

2 Q. What is political science?

3 A. It's an academic discipline.

4 Q. Regarding what, or what is it

11:18 5 about?

6 A. Politics.

7 Q. All right. Okay.

8 A. I'm sorry.

9 Q. That's all right. What aspect of

11:19 10 politics?

11 A. Well, it incorporates a number of

12 aspects. It has a number of subfields.

13 Q. I'm sorry. Could you repeat your

14 answer.

11:19 15 A. There are a number of subfields,

16 so there are several aspects.

17 Q. Do you consider yourself an expert

18 in the political arena as it exists in the

19 State of Texas today?

11:19 20 A. Yes.

21 Q. Do you consider yourself an expert

22 in political races as they exist today and as

23 they are going to occur in the next

24 legislative year -- or election year? I'm

11:20 25 sorry.

20 61 A. Political races?

2 Q. Yes, sir.

3 A. You mean the contests for public

4 office?

11:20 5 Q. Right. You don't call them

6 political races?

7 A. Yes.

8 Q. Is there something else that you

9 refer to or use the words "political races" to

11:20 10 define?

11 A. No.

12 Q. Okay. Do you consider yourself an

13 expert on political races?

14 A. Yes, sir.

11:20 15 Q. Have you ever hired yourself out

16 as a consultant to a politician who is running

17 for re-election or election?

18 A. No.

19 Q. Have you ever served as a

11:21 20 consultant to anyone in the political arena in

21 Texas?

22 A. Yes.

23 Q. And who is it that you served as a

24 consultant to?

11:21 25 A. Senator Ted Lyon.

11:21 1 Q. When did you do that?

2 A. Fall of 1989, spring of '70 -- I
3 mean of '90.

4 Q. Was Senator Lyons up for
11:21 5 re-election at that time?

6 A. I don't remember.

7 Q. Do you remember what it is
8 specifically Senator Lyons asked you to do?

9 A. Yes, I do.

11:21 10 Q. What was that?

11 A. He asked me to do a study of the
12 product liability area in the State of Texas.

13 Q. Public opinion regarding product
14 liability?

11:21 15 A. No.

16 Q. Then in what aspect did he want
17 you to study product liability?

18 A. At the time that he asked us to do
19 this -- or me to do it, the Texas Civil
11:22 20 Justice League and some of the other
21 organizations similar to it were beginning to
22 talk about the crisis or explosion in the
23 civil justice area -- the explosion of
24 litigation and the very high levels of
11:22 25 settlements that they alleged were occurring.

22 1 And Senator Lyon wanted to know, in fact, if
2 those claims could be supported in fact or if
3 they were -- were not supportable.

11:22 5 Q. Did you -- were you able to tell
6 Senator Lyons whether they were or were not
supportable?

7 A. I think generally my conclusion
8 was that they were -- that the notion of an
9 explosion of litigation and -- that there was
11:23 10 some sort of impending crisis in that area of
the state were considerably overblown.

12 Q. What about the, as you say, high
13 level of settlements? Were you able to
14 confirm that, in fact, that existed or didn't
11:23 15 exist?

16 A. The level of settlements in Texas,
17 the means particularly in some of the standard
18 areas, were not substantially out of line with
19 other states, and considerably lower, as I
11:23 20 recall, than one or two other states we
21 compared them with.

22 Q. Did you reduce any of your
23 opinions with regard to that study to writing?

24 A. Yes.

11:23 25 Q. And did you publish those opinions

11:23 1 or just give them to
2 A. No, they were not published.
3 Q. Have you ever been published in
4 any of the areas upon which or about which
11:23 5 you're giving testimony today?

6 A. Do you mean in the area of
7 tobacco?

8 Q. Well, we're going to go through
9 some opinions that I believe you're going to
11:24 10 be offering in this case in just a few
11 minutes. Are you familiar with those
12 opinions?

13 A. Yes.

14 Q. Have you ever published any
11:24 15 articles, treatises, books, et cetera, on any
16 of those particular opinions or that make
17 reference to those particular opinions?

18 A. I think the published written work
19 that I have done has touched on part of the
11:24 20 Opinion 7, at least.

21 Q. Okay. In what regard?

22 A. In regard to freedom of commercial
23 speech.

24 Q. How do you define commercial
11:25 25 speech?

25 1 A. Supreme Court I think defined it
2 pretty much as advertising --

3 Q. All right.

11:25 4 A. -- or communication of ideas about
5 services and products.

6 Q. We're going to talk about the
7 Number 7 in detail, but just to touch on it
8 briefly, you and I can agree, and I can agree
9 with you that in this country we have a right
11:25 10 to free speech, right?

11 A. I agree.

12 Q. And it's your understanding that
13 that right to free speech also enables or
14 empowers a person or entity to lobby Congress
11:25 15 or the state legislature?

16 A. That's correct.

17 Q. And it gives them the right to
18 peaceably assemble?

19 A. Correct.

11:26 20 Q. And to petition?

21 A. Correct.

22 Q. Do you have any particular
23 expertise about the First Amendment as it
24 applies to lobbying, either Congress or the
26 25 state legislature?

11:26 1 A. Not other than what I have studied
2 in constitutional law; and studying Supreme
3 Court decisions.

11:26 4 Q. Do you consider yourself an expert
5 on constitutional law and specifically the
6 First Amendment?

7 A. Yes.

8 Q. Do you have a law degree or a law
9 background?

11:27 10 A. No. Wait a minute. Not a law
11 degree.

12 Q. All right. Then what background
13 do you have that's related to law?

14 A. The constitutional law and public
11:27 15 law has been one of my interests and also one
16 of my fields of study when I was in graduate
17 school.

18 Q. You had some formal training and
19 education in the constitutional law area?

11:27 20 A. Yes.

21 Q. And have you had any work
22 experience in the area of constitutional law
23 and specifically the First Amendment?

24 A. By work experience meaning?

11:27 25 Q. Well, I don't know that you've

27 1 lectured on the constitutional First
2 Amendment. Have you done that?
3 A. Yes.
4 Q. Have you spoken on the First
11:27 5 Amendment to civic groups or other groups on
6 the constitution or the First Amendment?
7 A. I think so, from time to time.
8 Q. Does any one particular group come
9 to mind?
11:27 10 A. No. It was probably a service
11 club.
12 Q. And have you ever written any
13 articles, treatises, books, or been published
14 in any way regarding the constitution or the
11:28 15 First Amendment?
16 A. Only to the extent that I have
17 touched on that subject in two -- or in a
18 textbook that I've coauthored.
19 Q. Do you remember what particular
11:28 20 area or aspect of the constitution or First
21 Amendment you touched on in that textbook?
22 A. I was explaining in the book the
23 relationship between the Texas courts, the
24 Texas judiciary, and the Supreme Court.
11:28 25 Q. All right. How does that relate

11:28 11 to the First Amendment?

2 A. Supreme Court supervises
3 eventually what the state courts do, or it has
4 the power to review what the state courts do,
11:29 5 which touches, sooner or later, on the First
6 Amendment.

7 Q. How is that? I'm not making the
8 connection.

9 A. Texas versus Johnson.

11:29 10 Q. What does Texas versus Johnson
11 hold?

12 A. It holds that they can burn the
13 flag, U. S. flag as a form of free speech.

14 Q. And how does that relate to the
11:29 15 Supreme Court and the legislature?

16 A. The state legislature enacted the
17 flag desecration act and the Supreme Court of
18 the United States invalidated it.

19 Q. All right. So basically what
11:29 20 you're saying is that the courts have the
21 ability to find that certain legislation is
22 constitutional or unconstitutional, whether it
23 be related to the First Amendment or any other
24 particular part of the constitution?

11:29 25 A. Yes.

11:29 1 Q. You weren't necessarily referring
2 or speaking to the fact that a particular
3 member of Congress or the legislature might
4 have the ability to speak out to a court or
11:30 5 appear before a court or vice versa?

6 A. No.

7 Q. Do you have an opinion as to
8 whether a lobbyist's agenda for a client is
9 protected by the First Amendment?

11:30 10 A. Yes.

11 Q. And how long have you had that
12 opinion?

13 A. I don't know.

14 Q. When did you first develop that
11:30 15 opinion, if you can recall?

16 A. I don't know.

17 Q. What is your opinion?

18 A. My opinion is that the lobbyist is
19 free to speak to the representative, to the
11:30 20 member.

21 Q. Sure. He or she is able to, in
22 lawful manners, to lobby legislators on
23 special interests?

24 A. That's correct.

11:31 25 Q. Do you believe that the First

11:31 1 Amendment protects the lobbyist from
2 disclosure to a court or another tribunal of
3 what type of lobby activities that particular
4 person was involved in?

11:31 5 A. I don't know.

6 Q. So your knowledge or expertise in
7 the area of the First Amendment stops with
8 just the right to peacefully assemble and
9 petition and free speech?

11:31 10 A. Correct.

11 Q. Are you a member of any
12 organization such as the American Cancer
13 Society?

14 A. No.

11:32 15 Q. The American Heart Association?

16 A. No.

17 Q. Any of the health organizations
18 like that?

19 A. No.

11:32 20 Q. Do you regularly contribute to any
21 of those, financially?

22 A. I make small contributions when
23 neighbors solicit on occasions.

24 Q. When you were asked to speak on
11:32 25 behalf of the tobacco industry in this case,

32 1 were there any moral or ethical conflict
2 questions that you had to resolve before you
3 could take on this assignment?

4 A. I wasn't asked to speak for the
11:32 5 tobacco industry.

6 Q. Well, are you not testifying for
7 the tobacco industry in this case?

8 A. No.

9 Q. You have been hired by the tobacco
11:33 10 industry, haven't you?

11 A. No.

12 Q. You don't think you have been
13 hired by the tobacco industry?

14 A. No.

11:33 15 Q. Do you know that the lawyers that
16 hired you to testify in this case represent
17 the --

18 A. That's correct.

19 Q. -- a member of the tobacco
11:33 20 industry?

21 A. That's correct.

22 Q. And you understand that your
23 testimony will be used in support of their
24 case in Texarkana when this case goes to
11:33 25 trial?

11:33 1 A. I understand that's a possibility.

2 Q. So you would agree with me,
3 wouldn't you, that your testimony is given on
4 behalf of the tobacco industry?

11:33 5 A. No.

6 Q. How can you not agree with that
7 statement?

8 A. My testimony is given on behalf of
9 the law firm that requested that I do the
11:33 10 research.

11 Q. Where is the money coming from
12 that the law firm is paying you with?

13 A. I don't know that.

14 Q. How much have you been paid to
11:33 15 date for your work?

16 A. Probably about \$20,000. 25
17 maybe.

18 Q. Does that go through and include
19 your appearance at your deposition today?

11:34 20 A. Yes.

21 Q. So up through today, you have
22 billed and been paid for all the work that's
23 done?

24 A. Yes. Yes.

11:34 25 Q. Do you anticipate work in the

34 1 future, other than possibly testifying at the
2 trial of this case?

3 A. What kind of work?

4 Q. In this case, have you been asked
11:34 5 to come up with more opinions or rework
6 opinions or anything, do extra work?

7 A. No.

8 Q. Were you asked to do anything in
9 this case that you couldn't do?

11:34 10 A. No.

11 Q. Or that you would not do?

12 A. No.

13 Q. Did Mr. Hull explain to you --
14 when he asked you to take on this project, did
11:35 15 he explain to you that he was representing one
16 of the tobacco companies in the tobacco
17 litigation?

18 A. Yes, he did.

19 Q. And did he explain to you that the
11:35 20 tobacco company or the tobacco industry would
21 be paying for your time and services?

22 A. He said that he would pay me for
23 the time that I billed and the time that I
24 worked.

25 Q. Did you not believe that the

11:35 1 tobacco industry was going to be paying for your time and work in this case?

3 A. I supposed that that's where the
4 money would ultimately come from, but I was
11:35 5 paid by this law firm.

6 Q. Your check was a firm check?

7 A. Yes.

8 Q. And it referenced your work in the
9 tobacco case? What did it say in the legend
11:35 10 part of the check or the --

11 A. I don't believe that my check
12 referenced anything except payment for
13 services rendered or time billed.

14 Q. Okay. You brought some documents
11:35 15 with you today.

16 A. Yes.

17 Q. Do you have a copy of any of those
18 checks with you?

19 A. No.

11:36 20 Q. How many checks did you actually
21 receive?

22 A. I think seven or eight.

23 Q. And how were they broken up? In
24 other words, did they send a check after you
11:36 25 presented a bill to them or an invoice?

36 1

A. I billed them for work on a monthly basis.

Q. So for seven or eight months you presented bills and were paid?

11:36 5

A. Yes.

Q. And do you have those invoices with you today?

A. No.

Q. Do you know if Mr. Hull has those invoices or if you still have them?

A. I don't know if he has them.

Q. Do you retain a copy of the invoices?

A. I have copies.

Q. Do you regularly perform services separate and apart from your work at the university, such as this?

A. Paid services?

Q. Yes, sir.

A. No.

Q. When is the last time that you had a paying job separate and apart and in conjunction with your teaching at the university?

A. The research on the product

11:37 1 liability in '90 -- '89, '90.

2 Q. And before that when would have
3 been the last time?

4 A. Never.

11:37 5 Q. How much were you paid per hour on
6 this particular job?

7 A. One fifty.

8 Q. Plus expenses?

9 A. Plus expenses, yes.

11:37 10 Q. And did this work require you to
11 come to Austin?

12 A. Occasionally.

13 Q. Did you come to Austin to do
14 research?

11:37 15 A. No.

16 Q. Did you come to Austin to meet
17 with the lawyers here at the Maroney law firm?

18 A. I have been here I think twice
19 before. Each time I met with Mr. Hull.

20 Q. Did you know Mr. Hull before he
21 contacted you regarding the tobacco case?

22 A. No.

23 Q. Did he tell you how he got your
24 name?

25 A. Yes.

38 1 Q. How is it that he got your name?

2 A. His wife recommended me.

3 Q. And do you know his wife?

4 A. Yes.

11:38 5 Q. How do you know his wife?

6 A. She and I circulated in some of

7 the same circles in the Texas democratic

8 party, have off and on during the last 10, 15

9 years.

11:38 10 Q. Can you be more specific about

11 that?

12 A. No.

13 Q. Because you don't recall or why?

14 A. I just don't remember the various

11:38 15 occasions when she and I encountered each

16 other.

17 Q. Did you serve on local democratic

18 committees?

19 A. Yes.

11:38 20 Q. Socially have you had a

21 relationship with either Mr. Hull or his wife

22 prior to your taking on the job that he asked

23 you to take on for the tobacco companies?

24 A. No.

11:39 25 Q. Have you ever been out to eat with

11:39 #1 either one of them?

2 A. Mike and I have had some meals out
3 together but only since the process started.

4 Q. In your mind, did you have a
11:39 5 problem with doing any work that might benefit
6 the tobacco industry?

7 A. I was asked to do a piece of
8 research that was clearly within my area of
9 competence. I had no misgivings about doing
11:40 10 that research.

11 Q. In your mind did you have any
12 problem --

13 A. No.

14 Q. -- about doing any of the work?

11:40 15 A. No.

16 Q. Having been a lawyer for many
17 years, I'm competent to -- not that I've ever
18 done it, but I'm competent to represent
19 someone who has molested a child, for example,
11:40 20 but I would have a serious conflict about
21 doing that. Did you not have any conflict
22 about in any way helping the tobacco industry
23 in this case?

24 A. I didn't know if I would be
11:40 25 helping the tobacco industry.

40 #1 Q. You know that now, don't you?

2 A. No, I don't.

3 Q. You didn't know that the reason
4 that Mr. Hull asked you to work on this case
11:40 5 was to help his side of the case?

6 A. No.

7 Q. Why would you suppose that he
8 would ask you to do work for him if --

9 A. Because he wanted to know what
11:41 10 Texas public policy regarding tobacco and
11 smoking had been.

12 Q. But you didn't have any inkling or
13 idea that you would be helping him on the
14 tobacco side of the case, already knowing that
11:41 15 he represented one of the members of the
16 industry?

17 A. Until I started this I didn't know
18 what Texas public policy had been.

19 Q. I understand.

20 A. So I didn't know whether it would
21 help his side or hurt it.

22 Q. But you knew what his position on
23 the case was --

24 A. Yes.

41 25 Q. -- plaintiff or defendant?

11:41 1

A. Yes.

2 Q. And you knew -- I'm sure he told
3 you about the case, did he not?

11:41

4 A. Just the basic outlines, and it
5 was not much more than I knew from newspaper
6 reading.

7 Q. What is it that he did tell you?

11:41 10

8 A. Just that he was working on the
9 case and he wanted to know what public policy
has been with regard to smoking and tobacco.

11:42

11 Q. Do you feel that Mr. Hull withheld
12 some information from you about what it was he
13 was trying to get you to do? In other words,
14 that he was trying to get you to help him win
this case?

16 A. No.

11:42 20

17 Q. Are you telling me, then, that
18 even though you didn't know or understand that
19 he was trying to get you to help him that you,
number one, didn't believe he withheld
information but -- strike that.

22 I'm having trouble understanding
23 how someone as scholarly as you could
24 understand or come to understand --.

11:42 25

MR. SCHWARTZ: Would you like

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42

I some more coffee?

2 THE WITNESS: Please.

3 MR. MacRAE: I'll get it.

11:42

4 Q. (By Mr. Schwartz) -- come to
5 understand that your testimony would not
6 benefit one side or another in this case. Can
7 you help me understand that?

8 A. I don't believe I can.

11:43

9 Q. Is there anything that Mr. Hull or
10 any members of the Maroney firm told you not
11 to say in this deposition?

12 A. No.

13 Q. Did they tell you what a
14 deposition was?

11:43

15 A. Yes.

16 Q. What did they tell you?

17 A. Actually, they didn't have to tell
18 me what a deposition is. I know what they
19 are.

11:43

20 Q. Tell me what you understand a
21 deposition to be.22 A. A deposition is a part of the
23 pretrial discovery process to determine what a
24 witness or set of witnesses knows about
43 25 information that may be relevant to the case.

11:43 1 Q. And, of course, a very important
2 part of that process is the oath.

3 A. Correct.

4 Q. How many times have you taken and
11:44 5 oath to tell the truth that you can recall?

6 A. I have no idea.

7 Q. Have you ever been sworn in to any
8 office?

9 A. Yes.

11:44 10 Q. What office have you been sworn
11 into?

12 A. Political party office.

13 Q. All right.

14 A. We take an oath at the county that
11:44 15 we -- where I live.

16 Q. Have you ever been on any
17 particular or kind of board that reviewed the
18 conduct of others?

19 A. No.

11:44 20 Q. Not even at the university?

21 A. I was at one time a member of what
22 we call a hearing committee, which is --
23 actually I guess I was on the advisory
24 committee, but it's a part of a process that
11:44 25 we have for dealing with faculty complaints.

44 1 Q. Are those complaints about faculty
2 or complaints from faculty?

3 A. Both.

11:44 4 Q. And in your investigations of
5 those complaints, was it normal to have
6 persons come testify before you or speak with
7 you about the nature of their complaint in the
8 basis for the complaint?

9 A. They spoke with us.

11:45 10 Q. None of it was under oath?

11 A. None.

12 Q. And at times you were presented
13 with persons who had made complaints and had
14 very specific information to give you?

11:45 15 A. Yes.

16 Q. And at times you dealt with
17 persons who had made complaints but had very
18 general information to give you?

19 A. As I recall, every -- I was on
11:45 20 this board I think for two years. We met
21 maybe twice. I don't know of any occasion in
22 which the information was general. The
23 complaints were always fairly specific.

24 Q. And you always gave the teacher or
11:45 25 professor an opportunity to respond?

11:46 1 A. Sometimes they brought the
2 complaints.

3 Q. Okay.

4 A. Yes, but both parties always had
11:46 5 the opportunity to respond.

6 Q. The person who was the subject of
7 the complaint would have an opportunity to
8 respond?

9 A. Yes.

10 Q. And sometimes the responses were
11 very detailed and specific and sometimes they
12 were general; is that fair to say?

13 A. They were usually detailed.

14 Q. Did you ever have occasion and
11:46 15 have someone come before you and respond to a
16 complaint by saying "I don't know" or "I don't
17 understand"?

18 A. No.

19 Q. They didn't profess ignorance
11:46 20 about it?

21 A. Not that I recall.

22 Q. Do you find that to be unusual,
23 that you never had anybody come before you in
24 response to a complaint made against them and
11:46 25 confess ignorance about it or confess that

:46 1 they didn't understand what was going on?

2 A. I don't think I understand your
3 question.

11:46 4 Q. Do you -- let's let the court
5 reporter read it back, make sure I can restate
6 it again.

7 (The reporter read back
8 the requested text.)

9 A. No.

11:47 10 Q. (By Mr. Schwartz) Were you told
11 prior to your deposition today to disassociate
12 yourself from the tobacco industry in your
13 testimony?

14 A. No.

11:47 15 Q. Were you told not to say in your
16 testimony that you are working for the tobacco
17 industry?

18 A. No.

11:47 19 Q. Were you told to avoid being boxed
20 in, so to speak, into taking a position for
21 the tobacco industry?

22 A. No.

23 Q. Were you told to deny that you
24 were being paid by the tobacco industry?

11:48 25 A. No.

11:48 1 Q. Knowing that your testimony is
2 being given on behalf of the tobacco industry
3 in this deposition, does that disappoint you
4 or upset you in any way?

11:48 5 A. I'm not sure it's being given on
6 behalf of the tobacco industry.

7 Q. Well, you understand --

8 A. What I'm doing is presenting
9 myself in order to tell you what I think I
11:48 10 have discovered to the extent that you want to
11 know it.

12 Q. I understand. But in order to
13 fully understand your testimony, I need to
14 understand what bias and prejudice you may
11:48 15 have in this case, all right? We know that --

16 A. That's fine.

17 Q. We know that you received money
18 from the tobacco industry through the Maroney
19 law firm. That's a given; isn't that right?

11:49 20 A. I received the money from the
21 Maroney law firm.

22 Q. And your understanding is it came
23 from the tobacco industry?

24 A. I would imagine that it did.

11:49 25 Q. You don't have any reason to

:49 1 disagree or disbelieve with the fact that the
2 industry paid you and the Maroney law firm
3 didn't come out of pocket and pay you \$25,000?

11:49 4 A. I don't -- I don't imagine they
5 did.

6 Q. Do you have an opinion -- personal
7 opinion, not professional, a person opinion
8 about whether tobacco causes heart disease,
9 lung disease, or any form of cancer?

11:50 10 A. I have a personal opinion
11 regarding the subject but it's clearly not a
12 matter based in any expertise that I have.

13 Q. What is your opinion?

14 A. I think it's probably not good for
11:50 15 you.

16 Q. You've seen and read and heard a
17 lot about tobacco being related to heart
18 disease, have you not?

19 A. I have seen --

11:50 20 Q. Lung disease, have you not?

21 A. Yes.

22 Q. And cancer?

23 A. I have.

24 Q. And if I were to represent to you
11:50 25 that your testimony in this case is going to

11:50 1 be used for the benefit of, by, and for the
2 tobacco industry, and that you're going to be
3 furthering the cause of the tobacco industry,
4 does that make you feel good?

11:51 5 A. It doesn't make me feel bad.

6 Q. Are you happy about it?

7 A. I don't care about it.

8 Q. Why don't you care about it?

9 A. I got paid to do a job.

11:51 10 Q. All right. Whether it was for the
11 tobacco industry or for the Maroney law firm
12 or anybody else, right?

13 A. Right.

14 Q. And so you don't have a moral

11:51 15 problem or ethical problem one way or the
16 other doing a job for the tobacco industry in
17 this case?

18 A. I don't have a moral problem or an
19 ethical problem doing any piece of research on
11:51 20 public policy.

21 Q. I understand. But if I were to
22 give you drug money to pay for your services,
23 wouldn't you have a moral or ethical problem
24 accepting that money knowing the source of the
11:51 25 money?

51 1 A. Yes, I would.

2 Q. And you don't have the same or
3 similar type of moral or ethical problem,
4 accepting money from the tobacco industry who
11:51 5 makes a product that kills thousands of people
6 a day?

7 A. I'm not sure that it does, but
8 it's also a legal product.

9 Q. It is a legal product. Well,
11:52 10 suppose I lived in Las Vegas and ran a house
11 of prostitution and paid you with that kind of
12 money. You may not agree with what I do for a
13 living but are you going to take my money?

14 A. I don't know.

11:52 15 Q. You don't agree with what the
16 tobacco industry does, do you, by making a
17 product that kills people?

18 A. I don't know that we've proven
19 that it kills people.

11:52 20 Q. Well, let's step one square back.
21 They make a product that causes or contributes
22 to heart disease, lung disease, and cancer.

23 A. I don't know that.

24 Q. You've read that.

11:52 25 A. But I don't know it.

11:52 1 Q. All right. So you can't sit here
2 today and say that you have been convinced
3 that smoking causes heart disease, lung
4 disease, or cancer?

11:53 5 A. I think that we don't know for
6 sure that it does.

7 Q. Who told you that?

8 A. Nobody told me that.

9 Q. When did you come up with that
11:53 10 idea?

11 A. I've had it for a long time.

12 Q. And why is it that you believe we
13 do not know whether smoking causes heart
14 disease, lung disease, or cancers?

11:53 15 A. Why do I believe we don't know?

16 Q. Why is it -- how is it that you
17 can say you don't know? What is it that you
18 haven't been shown to prove to you --

19 A. Well, because I'm not a scientist
11:53 20 and I don't even read the scientific journals
21 on the subject.

22 Q. I'm not either, all right? I'm
23 not in law enforcement but I know what a stop
24 sign means and I know if you run that stop
11:54 25 sign there are consequences to it.

54 1 A. There? Okay.

2 Q. We all know what the -- what
3 certain things in our society are meant to
4 tell or convey to us. There are messages,
11:54 5 would you agree with me?

6 A. Sometimes there are.

7 Q. Stop sign has a message, it's to
8 stop. And we do draw certain conclusions from
9 the signs that we see out there, the stop
11:54 10 signs, so to speak. Would you agree with
11 that?

12 A. Yes.

13 Q. And when the surgeon general talks
14 about smoking being hazardous to your health,
11:54 15 do you have any reason to doubt it's hazardous
16 to your health?

17 A. Yes.

18 Q. Why?

19 A. Because I don't take simply at
11:55 20 face value what the surgeon general says.

21 Q. Well, what would it take to prove
22 to you that smoking is hazardous to your
23 health?

24 A. I don't know.

11:55 25 Q. You've never thought about it?

11:55 1 A. Of course I've thought about it.

2 Q. Well, what would it take?

3 A. I don't know.

4 Q. You just don't want to talk about

11:55 5 it?

6 A. I just don't know.

7 Q. If you thought about it you must

8 have come up with some conclusion or some

9 answer about "What would it take to convince

11:55 10 me that smoking is hazardous to my health?"

11 A. No, I haven't.

12 Q. Have you ever told your child that

13 smokes not to smoke?

14 A. Probably.

11:55 15 Q. And why would you tell your child

16 not to smoke if it wasn't hazardous to your

17 health?

18 A. Because it makes them stink.

19 Q. Do you have a dog?

11:56 20 A. Yes.

21 Q. Does the dog have a certain odor

22 occasionally?

23 A. Yes.

24 Q. Do you tell your kid to go wash

11:56 25 the dog because it stinks or do you get rid of

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56 1 the dog because it stinks?

2 A. I wash the dog.

3 Q. How long have you had the dog?

4 A. Six years.

11:56 5 Q. Have you ever thought about
6 getting rid of that dog simply because it has
7 a dog odor to it?

8 A. Yes.

9 Q. And have you ever done it?

11:56 10 A. No.

11 Q. Why not?

12 A. I love the dog.

13 Q. And has your child quit smoking?

14 A. The child never started smoking --

11:56 15 except the one -- I take it back. The one
16 that apparently has begun and I didn't know
17 about it.

18 Q. And you've talked to that
19 particular child? I don't know how old -- or
11:56 20 sex. I'm trying to be generic about it.
21 You've talked to that child about the dangers
22 of smoking. You've just told me that.

23 A. I think I talked to my children
24 when they were small about these things and
11:56 25 discouraged them.

11:57 1 Q. How old is this child that is
2 smoking now?

3 A. Almost 28.

4 Q. And you and this child have not
11:57 5 had any discussions about the dangers of
6 smoking?

7 A. I think we have discussed smoking
8 when he was growing up. I'm sure we must
9 have.

11:57 10 Q. Did he tell you how long he's been
11 a smoker?

12 A. No. As a matter of fact, he
13 didn't tell me.

14 Q. Somebody else told you that he was
11:57 15 smoking?

16 A. Yeah.

17 Q. Has anybody in your family ever
18 died of lung disease or heart disease or
19 cancer that was attributed to smoking?

20 A. My father died in 1992 and at the
21 time he died he was suffering from emphysema,
22 but that was not, I think, the immediate cause
23 of death. He had cancer.

24 Q. All right. Was he a smoker?

25 A. He had smoked from a period of

58 1 time sometime I suspect, and this is
2 conjecture, from the late '20s or early '30s
3 until about 1955.

4 Q. Did any doctor tell you or any
11:58 5 member of your family that some of his
6 problems were related to his former smoking
7 habit?

8 A. No.

9 Q. How did he quit smoking? Do you
10 remember?

11 A. He contracted whooping cough.

12 Q. Was he told to quit or did he quit
13 because of this health problem?

14 A. I don't think he had a health
11:58 15 problem. He simply choked every time he
16 smoked and I think that's what caused him to
17 stop.

18 Q. So aside from him having
19 emphysema, is there anyone else in your family
11:58 20 who has died of a smoking-related disease?

21 A. No.

22 Q. What about close friends? Are you
23 aware of any --

24 A. No.

11:58 25 Q. Is that one of the things that it

11:58 1 would take for you to believe that there's
2 connection between smoking and cancer, heart
3 disease, or lung disease, is for a family
4 member or a close friend to be taken from us
11:59 5 because of smoking?

6 A. I don't know.

7 Q. For a man that has thought about
8 the subject, you don't seem to have come to
9 any conclusions about it. Is that a regular
11:59 10 exercise of yours to think about certain
11 things and just ponder them but not to come to
12 any conclusion one way or the other?

13 A. Sometimes.

14 Q. I'm going to hand you what's been
11:59 15 marked as Elliott 1, and ask you to look at
16 that, please.

17 (Deposition Exhibit 1
18 was marked.)

19 Q. (By Mr. Schwartz) Have you ever
12:00 20 seen that before?

21 A. It looks like a document that I
22 have.

23 Q. Did you type this document or have
24 it typed?

12:00 25 A. No.

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1 Q. Did you write this document or
2 have it written?

3 A. No.

12:00 4 Q. Did you have any input into the
5 opinions that are stated on the first page of
6 Exhibit 1?

7 A. Yes.

8 Q. Did you draft the opinions stated
9 on the first page --

12:00 10 A. No.

11 Q. -- of Exhibit 1?

12 A. No.

13 Q. Did Mr. Hull provide you with
14 these opinions that are shown on the first
12:00 15 page of Exhibit 1?

16 A. No.

17 Q. How is it that these opinions
18 became associated with you, then?

19 A. We had conversation about these
12:01 20 subjects.

21 Q. Did he ever show you a list of
22 opinions like this?

23 A. No.

24 Q. Did he tell you who wrote or
12:01 25 drafted these particular opinions?

12:01 1 A. No.

2 Q. Did you have any input into the
3 writing of these opinions?

4 A. Not in the writing, but I had
12:01 5 input in terms of conversations that we had --

6 Q. All right.

7 A. -- in which I was asked questions
8 generally that addressed some of the same
9 issues.

12:01 10 Q. Can you identify for me in any of
11 these eight opinions on page 1 of Exhibit 1
12 what portions of those opinions you feel that
13 you are responsible for; in other words, that
14 you contributed to and that your contributions
12:01 15 ended up in print here.

16 A. I think all of them.

17 Q. All right. Have you ever seen any
18 other depositions in this case?

19 A. Yes.

12:02 20 Q. Whose depositions have you seen?

21 A. I've read several depositions.

22 Q. All right. Who?

23 A. Chet Brooks comes to mind.

24 Q. Why did you read Chet Brooks's
12:02 25 deposition?

:02 11 A. I have a large number of depositions and that's just one I picked up.

3 Q. Tell me what documents -- when I
4 say "documents," I'm including depositions,
12:02 5 Mr. Hull gave you for your review in this
6 case.

7 A. Mr. Hull gave me whatever I asked
8 for.

9 Q. All right. Tell me what you asked
12:02 10 for.

11 A. I can't tell you that. I asked
12 for literally hundreds of documents.

13 Q. You can't tell me what depositions
14 you asked Mr. Hull for and why?

12:02 15 A. I asked Mr. Hull for no
16 depositions.

17 Q. How did you end up with
18 depositions if he only gave you what you asked
19 for?

12:03 20 A. Mr. Hull sent me some depositions
21 to read.

22 Q. All right. So you asked him for
23 some things and he sent you things without you
24 asking for them?

12:03 25 A. Well, let me go back. To be

12:03 1 perfectly honest, I don't know if I asked for the
2 depositions or not. But having never given a
3 deposition, I was certainly curious about how
4 they worked.

12:03 5 Q. Okay. Did you want Senator
6 Brooks's deposition for any other reason
7 except to see how I might have asked him
8 questions?

9 A. I didn't ask for Senator Brooks's
12:03 10 deposition. It just happened to be among
11 those that were sent. I read several others,
12 too.

13 Q. Who is Tamara Plaut?

14 A. I don't remember. I think she
12:03 15 worked in the -- or works in the Texas
16 Department of Human Resources.

17 Q. Did you read her deposition?

18 A. Yes.

19 Q. Emily Untermeyer?

12:04 20 A. I think I read that one.

21 Q. Maggie Houston?

22 A. I don't remember reading that one.

23 Q. Mike McKinney?

24 A. I don't think I read that one.

12:04 25 Q. If I went down the list of

04 1 depositions, would you recall which ones you
2 read and which ones you didn't read?

3 A. Some of them I would.

12:04 4 Q. If you flip to the third page of
5 Exhibit 1, it says "Charles P. Elliott, Jr.,"
6 at the top.

7 A. Right.

8 Q. You did not create this part of
9 the document, did you? In other words, it
12:04 10 didn't come off of your word processor?

11 A. No.

12 Q. Do you understand -- let me ask it
13 this way: What is your understanding of what
14 this list represents?

12:04 15 A. I have no idea what this list
16 represents. If I looked at it a while longer,
17 I might.

18 Q. Have you ever seen it before?

19 A. No.

20 Q. If I represent to you that this
21 was a list of documents that was produced with
22 other documents in the disclosure for you and
23 your testimony in this case, would you differ
24 or disagree with that in any way?

21:05 25 A. I would have no grounds to.

12:05 1 Q. Okay. On the first page of --graph
2 that you're looking at, it actually has page 1
3 at the bottom, the top entry is "Environmental
4 Tobacco Smoke - Reference Manual, May 3,
12:05 5 1993." Did you look at that?

6 A. I don't remember if I did.

7 Q. What about the second one, "Annual
8 Cost of Cigarette Smoking in Texas, 1990"?

9 A. I believe that I did.

12:06 10 Q. What about the third one,
11 "Draft - Recommendations to Restrict Sales of
12 Tobacco Products to Minors, January 29, 1992"?

13 A. I have either read that document
14 or read something that covered the same
15 subject -- dealt with the same subject.

16 Q. Do you remember anything off the
17 top of your head sitting here today that you
18 gleaned or got from that particular draft
19 document?

12:06 20 A. Well, as I recall, one of the
21 proposals in that document was to increase the
22 tax level in order to raise the price and that
23 that would restrict minor purchases.

24 Q. Do you personally believe that
12:06 25 that's true, that if you raise the taxes that

06 1 it will have an effect of decreasing teen
2 usage?

3 A. I have reviewed documents and some
4 studies that have demonstrated that that has
12:07 5 been the case in other places.

6 Q. Do you have any reason to believe
7 that it would work here in Texas?

8 A. Some reason to believe it would,
9 yes.

12:07 10 Q. Why wouldn't we want youth to
11 smoke?

12 A. Why wouldn't we want me to smoke?

13 Q. Youth.

14 A. Oh, youth. I suppose because it's
12:07 15 one of those things that we would prefer that
16 they wait until they're older and wiser and
17 more mature before they decide to do.

18 Q. Why? It doesn't cause cancer or
19 heart disease or lung disease, so why --

20 A. I didn't say that it didn't. I
21 said I'm not convinced that it does.

22 Q. If you're not convinced, you
23 wouldn't tell them that there was any real
24 danger, would you?

25 A. I would discourage them from doing

12:08 1 it, sure.

2 Q. Because you don't know?

3 A. Because I don't know and because
4 it stinks. It's unpleasant.

12:08 5 Q. What about the entry "Impact of
6 Cancer on Texas, Texas Department of Health"?
7 Did you read that one?

8 A. I think I did.

9 Q. Anything you remember about that
12:08 10 article?

11 A. The data that they were showing
12 there was talking about cancer rates in Texas
13 in general and the amount of the cancer rate
14 and the types of cancer that they think is
related to smoking or related to smoking.

16 Q. The next one is the "Minutes of
17 the Texas Interagency Council on Smoking and
18 Health," July 18, '85. Do you remember
19 reading that one?

12:08 20 A. I think I do.

21 Q. Anything about that particular
22 article you remember?

23 A. Mr. Schwartz, one of the things
24 that happens here is there's an awful lot of
12:09 25 material that I read that overlaps and runs

12:09 1 together. So I'm not certain that I can tell
2 you exactly what was in any one of these
3 documents.

12:09 4 Q. Okay. There's nothing that you
5 remember about that particular document?

6 A. Not specifically, no.

7 Q. What about the "Texas Cancer
8 Plan - A Guide for Action, 1992"? Did you
9 read that one?

12:09 10 A. I think I did, yes.

11 Q. Do you remember anything about
12 that article?

13 A. I think this was one of those
14 documents in which the people who were
15 interested in the subject were trying very
16 seriously to educate the public and also
17 perhaps the state government on the issue and
18 show what might be done to reduce smoking
19 rates.

12:10 20 Q. What about the "Cancer Prevention
21 and Control - Intervention Strategies for
22 Texas, March 1989"? Anything about that
23 particular document that you remember?

24 A. Not specifically.

12:10 25 Q. Did you read every single document

12:10 1 that's listed here?

2 A. No.

3 Q. Do you know if every single
4 document listed here was supplied to you for
12:10 5 your review?

6 A. No, I don't, but I assume that
7 they all were.

8 Q. Do you have a pretty good stack of
9 documents at your office or at home?

12:10 10 A. I have a big stack in my study,
11 yeah.

12 Q. If we went through each one of
13 these documents on this list, could you tell
14 me the ones that you actually reviewed and the
12:10 15 ones you didn't review?

16 A. I'm not sure that I could. I can
17 tell you some of the ones -- do you have any
18 objection if I use some of the materials that
19 I brought?

12:10 20 Q. I don't mind at all.

21 A. Okay. You have everything --

22 Q. I don't know if I do or not.

23 A. I think you do. But what I did
24 was prepare summaries of -- of the things that
12:11 25 I found particularly useful. One of these is

11 1 a list of the documents that I used. And I
12 believe that everything on this list is
13 something that I cited in one place or
14 another.

12:11 5 Q. And this is entitled "Documents
6 Used by Charles Elliott"?

7 A. Yes. And I believe you have a
8 copy of that.

9 Q. There were two of them that you
12:11 10 gave me updates for today and one of them is,
11 in fact, the one you just handed me, right?

12 A. Exactly.

13 Q. How does this document entitled
14 "Documents Used by Charles Elliott" differ
12:11 15 from something you may have provided to
16 Mr. Hull for your disclosure?

17 A. I think that the one you have
18 today, for instance there is an entry at the
19 top of page 3, which is simply a reference to
12:12 20 a more recent public school health textbook.

21 Q. "Health Focus on Youth"?

22 A. Yes. And there is also at the
23 bottom -- I'm sorry. The very last entry on
24 page 6, "The Canadian Tobacco Tax Experience,"
12:12 25 which is a case study that I had read in the

12:12 I last couple of weeks, I guess.

2 Q. All right, I have marked this
3 document that we're talking about as Elliott
4 2. So let's refer to it like that, okay?

12:12 (Deposition Exhibit 2
5 was marked.)
6

7 Q. (By Mr. Schwartz) It will be an
8 exhibit to your deposition.

9 A. Okay.

12:12 10 Q. It would probably make more sense
11 to go through this list as opposed to the
12 bigger list. Would that --

13 A. I think that will help, yeah.

14 Q. Okay. Let me ask you, on the
12:13 15 first page under Roman numeral I, there is a
16 paper entitled "Reducing Youth Access to
17 Tobacco: A Partial Inventory of State
18 Initiatives."

19 A. Uh-huh.

20 Q. You read that one?

21 A. Yes.

22 Q. It's dated 1996 out of the
23 University of Chicago?

24 A. Correct.

12:13 25 Q. Do you know either of the authors

13 1 of that document?

2 A. No, I don't.

3 Q. Did the document indicate why
4 youth access should be restricted or reduced?

12:13 5 A. I don't think it said why. I
6 think it assumed that the people who were
7 interested in the topic had some consensus
8 about it.

9 Q. In all the material that was
12:13 10 provided to you for your testimony in this
11 case, did you read anything that said that
12 smoking causes heart disease, lung disease, or
13 cancer?

14 A. Yes, I did.

12:14 15 Q. But nothing that was authoritative
16 enough to convince you of that fact?

17 A. Not absolutely, no.

18 Q. And can you tell me in any way
19 that any of it fell short? What is it that
12:14 20 you needed additionally to so convince you?

21 A. Just based on what I read in the
22 popular media, I just don't believe that
23 connection has yet been positively and
24 decisively made.

12:14 25 Q. I've ask you a lot about that --

12:14 41

A. Yeah.

12:14

2 Q. -- but I really want to make sure
3 that I understand. Do you feel that your
4 opinion that it hasn't been conclusively shown
5 applies to the public generally? Do you feel
6 like you're different from the public at
7 large?

8 A. I don't know.

12:14 10

9 Q. Well, do you consider yourself an
10 average, reasonable person?

11 A. Yes.

12:15 15

12 Q. The -- everything that you've read
13 in your lifetime about smoking has not caused
14 you to be convinced that smoking causes
15 cancer, lung disease, or heart disease?

16 A. I'm not convinced that there is a
17 district link. Now, I am convinced that the
18 best thing that you should do -- the best
19 decision I can make is not to smoke.

12:15 20

Q. Okay.

21 A. Or to chew.

12:15 25

22 Q. And have you talked with friends
23 and family about your beliefs about smoking
24 not -- not being convinced that smoking causes
heart disease, lung disease, and cancer?

15 1 A. Yes.

2 Q. And do they share your beliefs
3 that they haven't actually been convinced of
4 that fact?

12:15 5 A. I don't know.

6 Q. Do you have any reason to believe
7 one way or the other that your friends and
8 colleagues and peers share your same views?

9 A. I think some do.

12:16 10 Q. Being a highly educated person,
11 and you are, I recognize that, do you have an
12 understanding that those less educated may
13 feel differently about whether they're
14 convinced or not or do you think as an
12:16 15 average, reasonable person in this community
16 you weigh the information that comes to you
17 and it either adds up or it doesn't add up
18 and, in your case, it hasn't added up?

19 A. Ask me the question again.

12:16 20 Q. A long question, wasn't it?

21 A. I know. That's why I want it
22 again.

23 Q. It's also what we call
24 multifarious. I'll have to ask him to ask
12:16 25 it.

(The reporter read back the requested text.)

Q. (By Mr. Schwartz) Let me break
that down now that I'm reminded what it
12:17 asking. Do you feel that those like yourself
who are more educated than others in our
society might see the proof or the propaganda
differently, or do you think that you really
9 are representative of everybody regardless of
12:17 10 educational background?

11 A. I think that I am probably -- many
12 of my colleagues who are engaged in some sort
13 of scientific or academic investigation are
14 probably more demanding of -- in terms of the
12:18 15 standards of proof.

16 Q. Do you know if the average
17 policeman is not as demanding as you are?

A. I don't know.

19 Q. Or the sales clerk at Wal-Mart is
12:18 20 more demanding than you are?

A. I don't know.

O. Or even the customer at Wal-Mart?

A. I don't know.

24 MR. MacRAE: Would now be an
12:18 25 opportune time for a break?

18 1

MR. SCHWARTZ: Sure.

2

THE WITNESS: Are we off?

3

THE VIDEOGRAPHER: We're off

4

the record.

5

(A recess was taken.)

6

THE VIDEOGRAPHER: We're on

7

the record.

8

Q. (By Mr. Schwartz) Mr. Elliott, I

9

told you that -- by the way, would you rather

12:29 10

be called Dr. Elliott? Or how would you

11

like --

12

A. I would rather be called Charles.

13

Q. I'm not going to call you Charles.

14

A. Mr. Elliott is fine.

12:29 15

Q. Okay. Mr. Elliott, I did tell you

16

that we could take a break at any time, but

17

what I didn't tell you is I'm going to ask you

18

after each break whether you talked with

19

counsel or not and what you talked about.

12:29 20

A. We just talked about the way it

21

was going and --

22

Q. Okay. Did you get any tips one

23

way or the other?

24

A. No. I got none.

12:29 25

Q. Did he tell you anything that you

12:29 1 needed to watch for, go back and correct, or
2 not do?

3 A. No.

4 Q. Does that mean that you just
12:30 5 haven't been convinced that he's -- never
6 mind. Well, does it mean he hasn't convinced
7 you you've done anything right or anything
8 wrong?

9 A. I have no idea what he's convinced
12:30 10 of.

11 Q. No idea. I could have said before
12 you spoke that that that's what you were going
13 to say.

14 Let's go back to Exhibit 2.

12:30 15 There's a document on the fourth page.

16 MR. MacRAE: Which one is
17 that again?

18 Q. (By Mr. Schwartz) Exhibit 2.

19 A. The documents used?

12:30 20 MR. SCHWARTZ: Yes. The one
21 he generated and produced today.

22 A. Fourth page?

23 Q. (By Mr. Schwartz) Yes, sir.

24 There's one called "Texas Medicine." It's

12:30 25 about the fourth one down. Did you read that?

12:30 1 A. Yes. I did.

2 Q. What was that about? What did it
3 have to offer?

4 A. I have to look at the others.

12:31 5 This was a public notice that Governor Preston
6 Smith had designated the week of
7 January 11 - January 16 as education week on
8 smoking and health in Texas.

9 Q. Anything about that article that
12:31 10 sticks in your mind?

11 A. It was just a very short blurb
12 that announced, in effect, he had said that --
13 had declared it.

14 Q. The fact that the governor of the
12:31 15 State of Texas was expressing some concern
16 about smoking, that play one way or the other
17 on your decision about whether you'd been
18 convinced or not that smoking caused heart
19 disease, lung disease, or cancer?

12:31 20 A. No.

21 Q. A couple down from there is
22 "Developing a Legislative Policy for
23 Cigarette Smoking." That seems to be right up
24 your alley.

12:32 25 A. Uh-huh.

12:32 1 Q. Would you agree with me, as far as
2 what you were asked to do here today?

3 A. It's certainly part of what I was
4 interested in in discovering or looking at.

12:32 5 Q. How did that article help you or
6 enlighten you with regard to your testimony?

7 A. This was the Texas Medical
8 Association in what they called a health
9 education consortium looking at the state of
12:32 10 public policy with regard to tobacco and
11 making some suggestions about where it should
12 go. But more than anything else, it was a
13 lament.

14 Q. What do you mean by that?

12:33 15 A. Well, they noted that the State
16 was spending about \$5 million for education on
17 drug and alcohol abuse and 40,000 on
18 anti-smoking.

19 Q. Well, do you have an opinion one
12:33 20 way or the other whether the State should have
21 been spending more or less on education?

22 A. I have an opinion.

23 Q. What is your opinion?

24 A. I think they probably should have
12:33 25 been spending more.

:33 1 Q. -- Why?

2 A. Because there just is not enough
3 information available, I think, to --
4 particularly to young people about what's
12:34 5 involved in the decision when they decide to
6 smoke or use tobacco.

7 Q. Your experience with your own
8 children leads you to believe that they're
9 easily convinced about a matter, especially
12:34 10 something that's harmful to them?

11 A. I don't think my experience with
12 my own children would be considered typical in
13 that regard.

14 Q. All right. What about other
12:34 15 children? Do you know generally, speaking
16 about youth, whether they're easily convinced
17 that something might be harmful to them or
18 not?

19 A. I don't know of direct personal
12:34 20 experience. What I do know is what I've read
21 and that is that children seem to be somewhere
22 in their immediate preteens or early teens,
23 particularly susceptible to the temptation to
24 use tobacco.

12:34 25 Q. Do you even know whether the

12:34 1 message would have been received by a teen
2 about smoking if it had been offered in any
3 other measure than it was by the State of
4 Texas?

12:35 5 A. No, I don't.

6 Q. How is it that you formulated an
7 opinion that the State didn't spend enough
8 money on educating youth if you don't know
9 that no matter what we would have done would
12:35 10 have made a difference?

11 A. Well, I think the more information
12 we have about a subject the better equipped we
13 are to make decisions like that and to be
14 involved with things. And the \$40,000 figure
12:35 15 is one that has popped up in more than one
16 source --

17 Q. You would --

18 A. -- that I've read.

19 Q. But you would agree with me, and I
12:35 20 don't mean to reiterate or repeat, but you
21 would agree with me that just because we threw
22 more money at it or made broader or greater
23 education programs directed at youth to keep
24 them from smoking, it doesn't mean that they
12:35 25 would ever have listened?

12:36 1 A. I think that would depend perhaps
2 on how the message was delivered and how often
3 it was repeated and by whom.

12:36 4 Q. If Joe Cool had come on a TV spot
5 and said in his leather jacket and his crew
6 cut and his Oakley sunglasses and his
7 cigarette hanging out of his mouth and told
8 kids "Don't smoke," kind of like Smokey the
9 Bear or the forest ranger did with don't start
12:36 10 camp fires, or don't start forest fires, do
11 you think that would have been effective?

12 A. I don't know.

13 Q. Why not? Why don't you know?

14 A. I just don't know. I don't know
12:36 15 about marketing and those kinds of things.

16 Q. That's fair. That's not your
17 area?

18 A. Yeah.

19 Q. You don't really know and you're
12:36 20 not able to tell us what should have been done
21 or what could have been done to reach youth?

22 A. No.

23 Q. You don't even know what money
24 should have been spent to reach youth?

12:37 25 A. No.

12:37 1 Q. ... And from a marketing sense, you
2 don't even know whether the money that was
3 spent was adequate or not, you just think more
4 money should have been spent?

12:37 5 A. Right. I'm inclined to think that
6 in a state of 16 million people, that \$40,000
7 was probably inadequate.

8 Q. Do you know what methods or
9 mediums were employed to educate youth with
12:37 10 that money?

11 A. One of the mediums was in public
12 school instruction program in the health
13 courses that are being taught there. Some of
14 it has to do with advertising by groups that
12:37 15 are dedicated to reducing the rate of
16 smoking. The State Department of Public
17 Health has exhibits that they provide and a
18 number of volunteer groups have speakers and
19 pamphlets and materials that they provide.

12:38 20 Q. You're not prepared today to
21 testify as to any suggestions you might have
22 that the State of Texas should have done to
23 better spread the word to the youth that
24 smoking is dangerous?

12:38 25 A. I think that one of the things

12:38 1 that the State of Texas could have done and
2 still could do is to significantly raise the
3 price of tobacco products.

12:38 4 Q. Why don't we outlaw tobacco? What
5 do you think about that?

6 A. I think that's not a good idea.

7 Q. Why not?

8 A. We tried it with alcohol and
9 prohibition and it didn't work.

12:39 10 Q. Assume that Texas could make it
11 illegal, make tobacco illegal. Do you think
12 that the problem with that would be the
13 policing authority or the fact that it would
14 create a black market or what?

12:39 15 A. I think it would create a black
16 market. I think it would lead to smuggling
17 from surrounding states, or Mexico, or at
18 least increased smuggling if I read the
19 materials right on that and it would simply
20 not be enforceable. There's a kind of a fine
21 line that we tread when we govern between
22 freedom and order. And the more you have of
23 one of those, the less you have of the other.

12:39 24 Q. Let's talk about that enforcement
25 issue, because I think it's real important.

12:39 1 If you have read Senator Brooks' deposition,
2 for example, I believe he testified to the
3 matter of the legislature creating laws and
4 then it was up to the policing authority to
12:40 5 enforce them. Do you remember that?

6 A. I don't remember that
7 specifically, but I'm familiar with the
8 issue --

9 Q. If the --

12:40 10 A. -- in general.

11 Q. If the legislature is enacting
12 laws to protect the public and the policing
13 authority is not able to enforce them, whose
14 fault is that? Do you have an opinion about
12:40 15 that?

16 A. Say it again.

17 Q. If the legislature is enacting
18 laws, is creating laws and the policing
19 authority is not able to enforce those laws,
12:40 20 whose fault is that? Is the legislature to be
21 faulted for that or does the fault lie with
22 the authorities for not being able to enforce
23 it because they don't assign the right
24 priority to it or for whatever reason?

12:41 25 A. I don't know. I suspect that you

41 1 could separate the blame probably into both
2 camps.

3 Q. All right. How would the
4 legislative branch be at fault or be to blame?

12:41 5 A. By not providing funding, for one
6 thing, to adequately police.

7 Q. You mean we would have to enlarge
8 or enhance our police force?

9 A. Or some -- or provide some kind of
12:41 10 a mechanism for enforcing the law that we
11 don't have at the state level.

12 Q. Well, assume with me if you would
13 that it wouldn't require any additional
14 manpower to enforce these laws, and that the
12:41 15 police could enforce the laws if they really
16 wanted to but assigned a low priority to it.
17 Would you agree with me that the legislature
18 is not to be faulted for that, it's the
19 policing authority that's to be faulted?

12:42 20 A. I think the legislature ought to
21 try to determine whether or not this can
22 become a priority for local enforcement
23 officials, whoever is designated to be
24 responsible for it.

12:42 25 Q. Do you have an opinion as to

12:42 1 whether the state legislature can in
2 legislation direct the policing authority to
3 give priority to this particular crime or
4 particular prohibition?

12:42 5 A. Do I have an opinion about whether
6 they can?

7 Q. Yeah. Do you know if the
8 legislature can even do that in legislation?

9 A. I don't know.

12:43 10 Q. Well, if they can't do that --
11 assume with me that they can't. And if they
12 can't do that, how can you fault them? You
13 can't?

14 A. I didn't say they couldn't. I
12:43 15 just said I didn't know if they couldn't.

16 Q. And I'm just -- hypothetically if
17 they can't, and assume with me that they
18 can't, just hypothetically, if they cannot do
19 that, then you can't fault them because

12:43 20 they've done what they were supposed to do
21 which is give the law to the authorities --

22 A. Right.

23 Q. -- and it's up to the authorities
24 to enforce the law.

12:43 25 A. Okay.

8:43 1 Q. Is that true?

2 A. Probably.

3 Q. Well, do you have an area in there
12:43 4 that you're not certain about that caused you
5 to equivocate instead of saying "Yes, that is
6 true"?

7 A. Well, I guess I keep thinking
8 about what the local law enforcement
9 priorities happen to be in any given location.

10 Q. Well, the question was if the
11 legislature -- and you have to assume this
12 with me as a hypothetical. If the legislature
13 cannot dictate priority in legislation for
14 criminal activity and to stop criminal
15 activity, in other words if they're making
16 something illegal and they cannot in that
17 legislation give it priority over arresting
18 burglary suspects or drugs or anything else,
19 then you can't fault the legislature if, in
20 fact, the policing authority is not creating
21 the results that the legislature intended for
22 the law to create?

23 A. Okay. I would agree with that.

24 Q. Okay. When we talk about the
12:44 25 legislature -- I'm sorry. When we talk about

12:44 1 the State of Texas doing or not doing
2 something, and I'm referring to your opinions
3 in Exhibit 1, what are we talking about? Who
4 are you talking about?

12:45 5 A. Talking about the State
6 legislature.

7 Q. Any other offices?

8 A. Certainly the governor is a
9 participant in the process, as are the courts,
12:45 10 ultimately.

11 Q. What about the people of the
12 State?

13 A. Public opinion?

14 Q. Sure.

12:45 15 A. Sure.

16 Q. Do you know -- and I guess the
17 word is have you been convinced that the
18 industry, tobacco industry, withheld certain
19 information from the public about the dangers
12:45 20 of smoking?

21 A. No.

22 Q. Have you read or heard anywhere
23 that any information was ever withheld?

24 A. I have heard that, yes.

12:46 25 Q. Have you heard that the industry

1 withheld information about nicotine levels in
2 cigarettes?

3 A. I have heard that.

4 Q. And have you heard that the
12:46 5 industry withheld information about its own
6 research and testing?

7 A. I have heard that.

8 Q. Are you of the opinion that if the
9 public, the courts, the governor, and/or the
12:46 10 legislature knew that information and, in
11 fact, if that information had been withheld --
12 we have to assume that fact that it had been
13 withheld.

14 A. Okay.

12:46 15 Q. And if the public, the courts, the
16 government, the legislature, any entity or any
17 person that you group into this name, the
18 State of Texas, had known that, that what has
19 been done in the past would still have been
12:47 20 done, nothing would be different?

21 A. I think probably not much would
22 have been done differently.

23 Q. If these entities, if the State of
24 Texas knew that the tobacco industry was
12:47 25 making cigarettes more addicting or more

12:47 1 addictive than they already were for their own
2 aggrandizement, you don't think that they
3 would have acted differently in some way?

4 A. Well, if the public has absorbed
12:47 5 that information that's come out that has
6 alleged that, they either have not believed it
7 or they have not been willing to bring
8 pressure on the legislature to deal with it.

9 Q. And we're still assuming that, in
12:47 10 fact, information was withheld and now we know
11 it was withheld?

12 A. Well, I don't know, but I think
13 that there have been a number of very serious
14 allegations made that seem not to have aroused
12:48 15 the people of the State of Texas particularly,
16 or the legislature.

17 Q. And how do you know it hasn't
18 aroused the people of the State of Texas?

19 A. We have done very little in the
12:48 20 legislature in response to it.

21 Q. All right. And the legislature is
22 motivated by the people or driven by the
23 people; is that what you're saying?

24 A. My work suggests that there are
12:48 25 lots of different kinds or sources of pressure

48 1 and demands on the legislature other than
2 public opinion and that that's only one of a
3 number.

4 Q. Such as the judiciary?

12:49 5 A. Judiciary, the governor, interest
6 groups.

7 Q. Is it your testimony that if the
8 public had been informed that the tobacco
9 industry's own tests and research indicate
12:49 10 that smoking causes cancer, heart disease,
11 and/or lung disease, that the public would not
12 have done anything different with regard to
13 the legislation that was being passed?

14 A. I think the public has had a lot
12:49 15 of that information for a long time and there
16 are probably lots of people who are convinced
17 that there is that direct and positive
18 connection, and they haven't asked the
19 legislature to do it.

12:49 20 Q. Did you get to read Senator
21 Caperton's deposition?

22 A. No, I did not.

23 Q. Did you get to read the entirety
24 of Senator Brooks's deposition?

12:50 25 A. Yes.

12:50 1 Q. Did you see in Senator Brooks's
2 deposition where he recognizes that the
3 legislature was restricted in doing things
4 many times because public opinion hadn't
12:50 5 gotten to that point?

6 A. Yes, I did.

7 Q. And if public opinion is not to
8 the level to where they're putting pressure on
9 the legislators or some special interest group
12:50 10 as you mentioned does not pressure the
11 legislature to do something, it won't get
12 done?

13 A. I'm not sure it won't, but it
14 falls way down on the list of legislative
12:50 15 priorities.

16 Q. It does lose priority?

17 A. Yes. Yes.

18 Q. And if these instances of
19 withholding information by the industry are
12:50 20 not known but later we learn, in fact, that
21 that has been done, how is it that you can say
22 that that would not have influenced what
23 public opinion might have been or what
24 pressure might have been put on the
12:51 25 legislature by either special interest groups,

51 1 the public, the courts, the governor, or
2 anybody else?

3 A. Well, there are people who are
4 saying that that information was withheld and
12:51 5 they're saying it I think well enough to
6 convince an awful lot of people that it's
7 probably true and it has not yet had that
8 effect.

9 Q. Do you know when it was first
12:51 10 learned that the information was withheld?

11 A. I don't recall. I recall when the
12 tobacco executives were testifying in
13 Congress, which was about a year, year and a
14 half ago. I also recall the 60 Minutes
12:51 15 interview and the news articles with Jeffrey
16 Wygant. And I think that goes back probably
17 two years or so.

18 Q. If we draw our line at two years
19 and say the public didn't know what
20 information was being withheld from them until
21 two years ago, can we then fault the State of
22 Texas for not doing more if, in fact, nobody
23 knew the real dangers of cigarettes and
24 smoking simply because the industry withheld
12:52 25 that information from us?

12:52 1 A. ~~you~~ Say that again, please

2 Q. There's another one of those
3 questions.

4 A. Uh-huh.

12:52 5 Q. If we draw our time line -- or
6 draw the line to start time two years ago,
7 marking the time when we first learned that
8 the industry withheld information from the
9 public, okay, can we say -- can you say that
12:52 10 the legislature would not have acted
11 differently because either interest groups,
12 public opinion, the courts, or the governor or
13 any other person or entity would not have put
14 pressure on them even if they knew that the
12:53 15 information had been withheld and knew what
16 information had been withheld?

17 A. I think the public has reason to
18 believe that information was withheld within
19 the last two years.

12:53 20 Q. All right.

21 A. And that they have not brought
22 pressure on the legislature to deal with that
23 issue.

24 Q. In the last two years?

12:53 25 A. In the last couple of years.

12:53 1 Q. But we can't fault them for before
2 that?

12:53 5 A. Let me say that the legislature
6 has done some rather substantial things,
7 particularly in the 75th, the last session,

8 things that they were not willing to do for a
9 long time prior to that.

10 Q. Okay. And you attribute that to
11 the new information?

12:53 10 A. I think it may be. I can't say.
11 I haven't seen poles making those direct
12 connections.

13 Q. Based on your education, training,
14 and experience, that is something that could
12:54 15 have resulted from the release of this type of
16 information that we have been talking about?

17 A. It could have, although, if I may,
18 in the State of Texas, it seems to me that the
19 legislature is more likely to respond to
12:54 20 organized group activity more expeditiously
21 than to public opinion.

22 Q. But it wouldn't change the nature
23 of my question and your answer?

24 A. No. I don't think so.

12:54 25 Q. On Exhibit 1 on the first page,

12:55 1 your first opinion states that "The State of
2 Texas has long-standing beliefs regarding
3 potential health risks and potential
4 healthcare costs associated with tobacco."

12:55 5 That is your first opinion, right?

6 A. Yes.

7 Q. And you basically -- that is your
8 opinion, one that you developed and that you
9 have offered?

12:55 10 A. We have had information available
11 to us for a long, long time suggesting that
12 there are problems.

13 Q. Did you take into consideration
14 that within the last two years the tobacco
12:55 15 industry has been forced to reveal that they
16 have known certain facts about smoking and
17 health that they hadn't revealed before?

18 A. I think that probably factors into
19 things. But again, I can't make a direct
12:56 20 connection --

21 Q. Okay.

22 A. -- between that and what the
23 legislature did, for instance, this last
24 session.

12:56 25 Q. Well --

56 1 A. It's responding, I think, to a
2 much -- a much broader range of considerations
3 than just that.

12:56 4 Q. Does this opinion apply equally
5 today or equally two years ago before the
6 industry was forced or before they were
7 discovered as withholding information as it
8 does today?

9 A. I think so, yeah.

12:56 10 Q. You think that we should have
11 known, and I mean empirically known, not
12 surmised or suspected, but we should have
13 known of potential health risks from tobacco,
14 the same as we would have known once the
12:56 15 industry was found out to have been hiding
16 information from us?

17 A. I think we had enough reasons to
18 be suspicious of tobacco use for a long time.

19 Q. And that those suspicions should
20 have been enough to cause us to be protective
21 of our -- I'm taking the State -- of our
22 people?

23 A. I think they should have been
24 sufficient to have caused us to do more than
25 we were doing as a state.

12:57 1 Q. All right. It's your opinion that
2 increasing excise taxes will have a negative
3 effect on consumption?

4 A. I have formed an opinion by
12:57 5 reading experiences in other places where an
6 increase in excise tax is a substantial
7 increase -- substantially raises the price of
8 tobacco products has reduced consumption among
9 some groups.

12:57 10 Q. Over the last hundred years has
11 there been a substantial increase in tobacco
12 taxes?

13 A. Not a real increase.

14 Q. Not an increase that's great
12:58 15 enough to cause youth to quit or other people
16 to quit?

17 A. Mostly the increases have not been
18 adjusted for inflation.

19 Q. Have you ever, by the way, brought
12:58 20 any of your opinions to any state legislator
21 and tried to help enact proper legislation
22 that you deem to be proper to help curb youth
23 smoking?

24 A. No.

12:58 25 Q. Why not?

58 1 A. I don't know why not.

2 Q. Is that something that you intend
3 to do in the future or plan to do in the
4 future?

12:58 5 A. I don't know. I may.

6 Q. What do you know about Texas, the
7 State's long-standing beliefs regarding the
8 potential healthcare costs associated with
9 tobacco?

12:59 10 A. I know that the numbers that have
11 been published about the costs of tobacco, and
12 I think these include -- the numbers I've seen
13 include purchase cost price as well, but
14 they -- I think the number I've seen is it
12:59 15 runs something in the neighborhood of 4
16 billion dollars.

17 Q. But how does that relate to your
18 opinion that the State of Texas has had
19 long-standing beliefs regarding potential
12:59 20 healthcare costs associated with tobacco?

21 A. I don't think that I said anything
22 about -- well, I don't see the connection
23 you're trying to make here.

24 Q. I'm just reading your opinion.

12:00 25 A. Yeah.

13:00 1 Q. Okay. And all I've done is take
2 out the potential health risks. I've
3 separated the two points that you made in your
4 opinion and the first -- I read it one way at
13:00 5 first. I said "The State of Texas has
6 long-standing beliefs regarding the potential
7 health risks .. associated with tobacco."

8 A. Right.

9 Q. And now I just read it without
13:00 10 "the potential health risks" in there and put
11 in "potential healthcare costs." I just want
12 to understand --

13 A. I don't know that that reveals
14 anything about what they regard as potential
13:00 15 healthcare costs.

16 Q. My question was what do you know
17 about that?

18 A. I don't know what -- I can't
19 separate out from that 4 billion what they
13:00 20 consider to be healthcare costs and what was
21 purchase price.

22 Q. You stated the State of Texas has
23 long-standing beliefs regarding the potential
24 healthcare costs associated with tobacco.

13:01 25 What are the long-standing beliefs?

01 A. . . I think they think it makes people
2 sick and that somehow, you know, we have a lot
3 of people that we treat. There are some
4 figures, for instance, that show the number of
13:01 5 cancer cases in the state and the proportion
6 of those cancer cases that are lung cancer and
7 the proportion of those that they relate to
8 smoking.

9 Q. I don't mean to keep going over
13:01 10 this, but I don't understand where the answer
11 is.

12 A. I guess I don't understand your
13 question.

14 Q. All I'm doing is reading your
13:01 15 opinion and asking --

16 A. But you're asking me a question
17 that I don't understand.

18 Q. Explain your opinion. The opinion
19 I want you to explain is "The State of Texas
13:01 20 has long-standing beliefs regarding
21 the ... potential healthcare costs associated
22 with tobacco."

23 A. I think we have long suspected
24 that it creates a lot of medical problems and
02 25 that it's been expensive.

18:02 1 Q. - And from where do you come up with
2 that opinion? What do you use in order to
3 formulate that opinion? What information did
4 you take into consideration in formulating
13:02 5 that opinion?

6 A. I think publications by the Texas
7 Cancer Council and the Cancer Association and
8 the Texas Heart Association, Lung
9 Association. And those -- they have been
13:02 10 publishing information about that for a long
11 time.

12 Q. Is it your opinion that the State
13 of Texas knew everything there was to know
14 about smoking and health back in the '60s but
13:02 15 just continued to run its course or is it --

16 A. No.

17 Q. -- your opinion --

18 A. Didn't know anything they needed
19 to know or anything there was to know.

13:03 20 Q. They have learned as time has gone
21 on, have they not?

22 A. No doubt.

23 Q. And they have learned by and
24 without the help of the tobacco industry,
13:03 25 would you agree with that?

03 1 A. The tobacco council has published
2 a lot of studies on the matter. And many of
3 those -- much of their data and many of their
4 studies have been criticized.

13:03 5 Q. Criticized by who?

6 A. By the people who were trying to
7 discourage smoking and people who would say
8 that they're not taking into account all of
9 the variables that needs to be taken into
13:03 10 consideration here.

11 Q. Do you have any factual knowledge
12 or information about the research that any
13 aspect of the tobacco industry conduct such as
14 what type of tests they conducted, when they
13:04 15 conducted them, et cetera?

16 A. None other that I can recall right
17 now except some of their data that they
18 published about the economic impact and the
19 unemployment impact of substantially reducing
13:04 20 tobacco use. One of their arguments has been
21 that if we really dig in on this and
22 substantially reduce it it will create a
23 significant amount of economic dislocation.

24 Q. And that might be important to
13:04 25 them and the tobacco growers and everybody

13:04 1 associated with the industry, right?

2 A. Right.

3 Q. And then we have, as a state, the
4 tasks of balancing the public policy and
13:04 5 protecting the public and worrying about what
6 happens to those people in the east coast
7 states that grow tobacco and those companies
8 on the east coast or the eastern part of the
9 United States that produce tobacco in

13:05 10 cigarette form, right?

11 A. Right.

12 Q. And would you fault the State of
13 Texas for opting to protect its people as
14 opposed to protecting that industry?

13:05 15 A. No, not to the extent that they
16 have acted to protect the people.

17 Q. Do you fault the State of Texas
18 for imposing excise taxes on tobacco?

19 A. No.

13:05 20 Q. And we've already gone over the
21 fact that you don't think it should be
22 outlawed because you don't think that's
23 practical?

24 A. Right.

13:05 25 Q. Let's look at Number 2.

05 1 A. Okay.

2 Q. "The State Legislature has
3 recognized tobacco as a significant revenue
4 source." That's your opinion?

13:05 5 A. That's correct.

6 Q. And has consistently made the
7 policy decision to maintain or raise revenue
8 through taxation and licensing fees, and to
9 regular tobacco rather than prohibit it."

13:05 10 A. Right.

11 Q. But it doesn't say in there what
12 we've already agreed on and what you've
13 already stated, and that is you don't think it
14 was practical to try to prohibit it?

13:06 15 A. That's correct.

16 Q. You don't fault the State for
17 taxing tobacco?

18 A. No.

19 Q. So really you're just stating -- I
20 guess I don't see the point of the opinion
21 because on the one hand you're not faulting
22 the State for imposing excise taxes and you
23 realize and recognize that they couldn't have
24 prohibited the use of tobacco so what is the
06 25 opinion? What's the point of the opinion?

13:06 1 A. The point of the opinion is that
2 they have taxed it for revenue purposes but
3 not used market forces, not engaged market
4 forces in ways that were calculated to
discourage its use.

13:07 5 Q. Well, I would have to have you
6 tell me that to understand that that is what
7 you meant in the Opinion Number 2 because it
8 doesn't even say anything like that in there.

13:07 10 Would you agree with me?

11 A. What that says is that the State
12 of Texas has used tobacco as a source of
13 revenue and has not regarded it -- or regarded
14 the taxing process as a means of discouraging
use.

16 Q. Well, that's an assumption that
17 you're making that is not totally accurate, is
18 it?

19 A. Yes, it is.

13:07 20 Q. You don't fault the State for
21 taxing tobacco. If we're going to have it we
22 might as well tax it, is that fair to say? Is
23 that part of your opinion?

24 A. No. I'm simply saying they have
13:08 25 taxed it.

- 08 1 Q. Right.
- 2 A. But they've taxed it for revenue
3 purposes only.
- 4 Q. Why else would you tax it?
- 13:08 5 A. To discourage use.
- 6 Q. Do you fault the State of Texas
7 for not doing more to try to get Congress to
8 impose a greater tax on tobacco so as to
9 diminish youth access or usage?
- 13:08 10 A. Yes, I do.
- 11 Q. What do you know about that?
- 12 A. In 1992, the Texas legislature
13 passed a concurrent resolution asking Congress
14 not to raise federal excise taxes on tobacco
15 because they were afraid, and they said so in
16 their resolution, that it would discourage
17 tobacco use and diminish state revenues.
- 18 Q. How can you fault them?
- 19 A. House Concurrent Resolution 22,
13:09 20 71st legislature.
- 21 Q. How is it that you fault them for
22 that in 1992, more than two years ago?
- 23 A. How is it that I fault them?
- 24 Q. Yes, sir.
- 13:09 25 A. They had reason to be aware of at

13:10 1 least the suspected dangers of tobacco use and
2 they should have welcomed whatever sources
3 of -- whatever opportunities presented
4 themselves to discourage its use.

13:10 5 Q. Well, what ultimately happened in
6 Congress?

7 A. Congress didn't raise that one but
8 later on, I believe it was the same year,
9 decided not to revoke or not to let expire a
13:10 10 federal excise tax that they had levied
11 earlier.

12 Q. Do you have any personal knowledge
13 as to whether without the State of Texas'
14 input Congress would have done it --

13:10 15 A. No.

16 Q. -- or would not have done it?

17 A. No.

18 Q. You don't even know how much
19 credence or weight was given to what the State
13:10 20 of Texas wanted or not?

21 A. No.

22 Q. So the fact that they said that or
23 made that resolution cannot be given any
24 amount of weight by you in the final act of
. 13:11 25 Congress whether they did or didn't --

11 1 A. "Correct."

2 Q. -- impose an excise tax?

3 A. Correct.

4 Q. And if it's the people in the

13:11 5 State of Texas who are smoking who are telling

6 the legislators who represent them no more

7 excise taxes, we don't want any federal excise

8 tax and the State is then relaying the message

9 by this resolution to Congress, are we

13:11 10 faulting the state legislature --

11 A. You're making a connection that I

12 don't think we can make.

13 Q. Why not?

14 A. I don't have any idea what the

13:11 15 public sent to the legislature at the time.

16 All I know is that the legislature passed the

17 resolution.

18 Q. Well, the legislature does

19 basically what the public wants them to do?

13:12 20 A. You're making a connection that

21 doesn't all follow.

22 Q. Special interest groups that --

23 A. Special interest groups.

24 Q. If the smoking public had any part

13:12 25 in this resolution, in the creation or the

13:12 1 existence of the resolution that you have been
2 talking about and they're the ones who have
3 put the pressure, and I'm sure that -- let me
4 ask this. Let's go back. Do you know of any
13:12 5 special interest groups that had any part to
6 play in the creation of this resolution?

7 A. No.

8 Q. Do you know if the tobacco
9 industry had anything to do with it?

13:12 10 A. No.
11 Q. Do you know one way or the other,
12 yes or no?

13 A. No.

14 Q. Do you know if the tobacco
13:12 15 industry lobbied the State or Congress on that
16 particular piece of legislation?

17 A. No, I do not know that.

18 Q. Would that -- if you found out
19 that they did one way or the other,
13:12 20 specifically if they lobbied against the
21 imposition of increase in excise tax, would
22 you then have to change your opinion? You
23 can't fault the State of Texas as much if, in
24 fact, the tobacco industry has had some part
13:13 25 in either imposing a tax or not imposing a

13:13 1 tax?

2 A. What's your question?

3 Q. You would have to split the fault,
4 wouldn't you? You would have to take some
13:13 5 fault away from the State of Texas --

6 A. The point here has nothing to do
7 with whether Congress did or did not increase
8 the excise tax. The point is that this is an
9 expression of the Texas legislature that gets
13:13 10 at this issue.

11 Q. That may be your agenda in this
12 case but I've got to ask you certain
13 questions.

14 A. Okay.

13:13 15 Q. And I understand what your agenda
16 is. I understand, whether you want to admit
17 it or not, I understand who you're testifying
18 for in this case and I also know on whose side
19 your testimony is going to be used. And it's
13:14 20 not going to be used to help the State of
21 Texas, it's going to be used by the tobacco
22 industry to help the tobacco industry in their
23 futile attempt to defeat the State in this
24 case.

13:14 25 Now my question simply is

13:14 1 recognizing that you don't even know the
2 forces that came to play in the creation of
3 this resolution or the forces that came to
4 play in Congress either enacting or failing to
13:14 5 enact or increase -- enacting increased excise
6 taxes, your opinion is unfair if you're
7 relating it back to the 1992 resolution
8 because you don't know. Is that yes or no?

9 A. You didn't ask a question.

13:14 10 Q. I'll ask it one more time. I'll
11 break it down for you. Let's take it in
12 pieces. I hate to be repetitive, but
13 obviously I don't feel like I've had an answer
14 and I can't move on.

13:15 15 You don't know what forces played
16 on the State legislature in arriving or
17 creating that legislation?

18 A. I do not know as a fact what
19 forces played on that.

13:15 20 Q. You don't know what forces played
21 on the Congress in enacting legislation which
22 created or raised or affected an excise tax on
23 tobacco?

24 A. I do not know.

13:15 25 Q. This is the one -- the one

15 1 resolution to Congress where Congress did or
2 didn't act. That's what we're talking about.

3 A. Okay.

4 Q. And so your opinion that the State
13:15 5 has done little -- let me read it to you --
6 has recognized tobacco as a significant
7 revenue source and consistently made public
8 policy decision to maintain and raise revenue
9 rather than prohibit it is an unfair opinion
13:16 10 and one not based on fact if you're relating
11 it to the 1992 resolution. You can't use that
12 as an example. My point is you cannot use the
13 1992 resolution as an example to back up your
14 opinion because you don't know, right?

13:16 15 A. I do know what the legislature
16 said.

17 Q. But you don't know why, you don't
18 know how --

19 A. I don't have to know why. All I
13:16 20 have to know is what they said.

21 Q. You do have to know because if the
22 tobacco smokers have public opinion and that
23 public opinion played a part and was a force
24 in the creation of this resolution, you need
13:16 25 to know that before you can state this

13:16 1 opinion?

2 A. No, I don't.

3 Q. The State of Texas is only doing
4 what its tobacco smoker public is telling --

13:17 5 A. That's not what that says.

6 Q. It's not what it says?

7 A. No. It has nothing to do
8 necessarily with the tobacco-smoking public.

9 Q. It doesn't have anything to do
13:17 10 with the tobacco industry, the vending machine
11 industry, all of the people who sell through
12 small stores and grocery stores tobacco
13 products?

14 A. It may have. But this says
13:17 15 nothing about the smoking public.

16 Q. It may have everything to do
17 with -- it may have something to do with the
18 smoking public just as much as it has to do
19 with the tobacco industry and the retailers
13:17 20 and distributors. You've got to recognize
21 that.

22 A. I didn't say it didn't have
23 anything to do with them. I'm simply saying
24 that the legislature has expressed itself in
13:17 25 this particular instance as not wanting the

higher federal excise tax because it was afraid it would reduce consumption and revenues to the State of Texas.

13:17 4 Q. But you don't know which forces
 5 and in what quantities or in what -- if it's
 6 even measurable in what gravity --

A. That's true. I don't know.

8 Q. -- any of these groups played in
9 that?

13:18 10 A. That's true.

Q. And I think your question -- your
opinion assumes that the legislature on its
own, and that's what I think is unfair, came
up with the idea to ask Congress not to
increase excise taxes and they wouldn't come
up -- have you ever seen a piece of
legislation that comes out of our State
legislature that isn't created or defeated or
affected in some way by public opinion,
special interest, other legislative or
judicial bodies?

A. Let's come off the record.

23 THE VIDEOGRAPHER: We're
24 off.

25 (Off-the-record discussion.)

- 13:18 1 THE VIDEOGRAPHER: We're on
2 the record.

3 Q. (By Mr. Schwartz) Can you read
4 the question back, please.

5 (The reporter read back
6 the requested text.)

7 Q. (By Mr. Schwartz) I want to ask
8 the second part of that. Have you ever seen a
9 piece of legislation that was not affected by
13:20 10 public interest, public opinion, special
11 interest, the judicial or the legislative or
12 any other branch of government?

13 A. Not that I can recall.

14 Q. You would have to find it fair
13:20 15 only to assume that this resolution was
16 effected in some way by one of those
17 interests, public opinion, special interest,
18 et cetera.

19 A. I think that public opinion
13:20 20 played, at the very least, an indirect role
21 here.

22 Q. What about special interests?

23 A. Possibly.

24 Q. And so do you believe that the
13:21 25 State, the governing body of the State should

13:21 1 be faulted for this resolution that was
2 created by the legislature based on the
3 influences of public opinion, special
4 interest, and whatever else, whether it be
13:21 5 judiciary or executive or legislative
6 branches?

7 A. They should be faulted.

8 Q. Why?

9 A. Because they have -- have, based
13:22 10 on records and research from other places,
11 information that tells them or -- should have
12 had available information that would tell them
13 that higher excise taxes is one way to
14 discourage use.

13:22 15 Q. I understand. That's -- I
16 understand that's part of your testimony.

17 A. Okay.

18 Q. My question is simply -- and
19 you've already established that, in fact,
13:22 20 public opinion, special interest, and other
21 factors -- let's just refer to the rest of
22 them as "other factors" -- could have and
23 likely did have some affect on the creation of
24 this resolution.

13:22 25 A. Right. And I think public opinion

13:22 1 effect here was, in a fashion, indirect..

2 Q. All right. We're not talking
3 about degrees or gravity or anything like
4 that.

13:22 5 A. Okay.

6 Q. We're just talking about the
7 forces on the legislature to come up with this
8 resolution to Congress on excise tax matter.

9 A. Uh-huh.

13:23 10 Q. Okay?

11 A. Uh-huh.

12 Q. Is that yes?

13 A. Yes.

14 Q. And my question very simply is
13:23 15 that if the legislature didn't act alone and
16 they acted on the influence that we have been
17 talking about, the State of Texas, the State,
18 the governing body, cannot be faulted because,
19 in fact, they didn't make this decision by
13:23 20 themselves or by itself?

21 A. I think they can be faulted.

22 Q. Okay. And my question was how and
23 then we got off somewhere else.

24 A. All right. The how is a little
13:23 25 hard to get to, but the how is partly because

:23 1 I think the legislature, in all probability,
2 overestimated the amount of straight revenue
3 that the tobacco taxes produced, and the thing
4 that the Texas legislature seems to fear more
13:24 5 than almost anything else is having to pass a
6 tax bill. And so public opinion played in in
7 that fashion.

8 Q. Right. I don't doubt that. The
9 State of Texas as a governing body did not
13:24 10 create this resolution. You agree with me
11 there?

12 A. The legislature created it.

13 Q. The legislature did, right?

14 A. (Witness nods.)

13:24 15 Q. Now, the legislature is only a
16 portion of what you're referring to as the
17 State of Texas.

18 A. (Witness nods.)

19 Q. Right?

13:24 20 A. Right.

21 Q. And if the legislature created
22 this resolution based on and because of public
23 opinion, special interest and other possible
24 forces, we can't fault the State itself, we
25 can't fault the governing body, can we?

13:25 1 A. I do.

2 Q. All right. You're trying real
3 hard not to agree with me on a point that's
4 very simple. And I --

13:25 5 A. Disagreeing with you is not the
6 point.

7 Q. Okay. I hope not. What I was
8 trying to say was it appears that you're
9 trying very hard, even though we're going down
13:25 10 the same road, we're getting to the same
11 point, trying very hard not to agree that
12 we're at that same point that we're at and
13 that is that if the State of Texas didn't do
14 this and the legislature did, then how can you
13:25 15 fault the State of Texas?

16 A. I guess I fault the State of Texas
17 as the chief policy making body for the
18 state. I faulted them in terms of having
19 ignored some other kinds of factors affecting
13:26 20 the use of tobacco that seemed not to have
21 been taken into consideration.

22 Q. And in 1992 -- we've already
23 established that was before the industry was
24 forced to reveal that they had withheld
13:26 25 information about the dangers of smoking?

26 1 A. I believe that's correct, yeah.

2 Q. So if you're faulting them -- I
3 know I'm not going to change your opinion, I'm
4 just trying to understand your opinion. If
13:26 5 you're faulting them, you're going to fault
6 them for what they didn't know as well as what
7 they should have known?

8 A. I don't think whether they knew
9 about Dr. Wygant's evidence or whether they
13:26 10 knew what the tobacco company executives later
11 revealed necessarily has much to do with my
12 answer. They had other kinds of information
13 that certainly caused them -- should have
14 caused them to wonder if -- about trying to
13:27 15 pursue a more restrictive policy on tobacco.

16 Q. If we're separating -- let's take
17 the State of Texas as you used the term, and
18 let's take the governing body and separate it
19 from the legislative body. Let's take the
13:27 20 executive branch and separate it from the
21 legislative branch. We can even use the
22 judiciary because we do have three branches of
23 government. Can you assign the percentages of
24 fault that you're talking about in Opinion
25 Number 2 to these three branches?

18:27 1 A. I think the legislative branch
2 bears the bulk of the burden of -- bulk of
3 responsibility for it.

4 Q. 51 percent? 90 percent?

13:28 5 A. I have no idea.

6 Q. Have you even thought about that?

7 A. Of course.

8 Q. In your thought process, have you
9 ever tried to assign a percentage of fault on
13:28 10 the three branches of state government?

11 A. No.

12 Q. Why not?

13 A. Because it doesn't seem like a
14 useful way to spend my time.

13:28 15 Q. \$150 an hour doesn't make it a
16 useful way to spend your time?

17 A. No, it doesn't.

18 Q. You weren't asked to do that, were
19 you?

13:28 20 A. I have been studying the subject
21 of Texas politics for a long time. I don't
22 know of anybody who's come up with a scheme
23 that would allow us to arrive at those kinds
24 of numbers.

13:28 25 Q. You've not even formulated an

:28 1 opinion as to the percentage of fault even if
2 you can't come up with an exact percentage,
3 you can't come up with a rough estimate of
4 what percentage of fault?

13:29 5 A. No.

6 Q. You just know that the legislative
7 branch would be the one most at fault?

8 A. In my opinion, as a student of the
9 process, the legislature possesses, the bulk
13:29 10 of the burden for determining public policy,
11 and certainly democratizing theories suggest
12 that that ought to be the case.

13 Q. The legislature is affected on all
14 legislation by public opinion and special
13:29 15 interests?

16 A. By a variety of forces.

17 Q. And others?

18 A. And others.

19 MR. SCHWARTZ: Take lunch.

13:29 20 MR. MacRAE: Sure.

21 (A recess was taken.)

22 THE VIDEOGRAPHER: We're on
23 the record.

24 Q. (By Mr. Schwartz) Did you have
14:13 25 any discussions at lunch about any of your

14:13 1 former testimony?

2 A. No. We talked about my wife's
3 surgery and how miserable the Longhorns looked
4 last week. That kind of thing.

14:13 5 Q. I'm sure that's been discussed a
6 lot lately. Okay.

7 Let's look at Opinion Number 3.

8 Here is your -- it's Exhibit 1. The opinion
9 is -- your opinion is "The State Legislature
14:14 10 has also made the policy decision to maintain
11 tobacco as a legal product." We've already
12 determined that they couldn't make it illegal
13 for a number of reasons, right?

14 A. I think that's correct, yes.

14:14 15 Q. "Despite the State's belief about
16 the potential health risks." So we're not --
17 you can't really fault the State legislature
18 for keeping it a legal product because there's
19 not an alternative to that, right?

14:14 20 A. It would appear that's the case,
21 yeah.

22 Q. And then the last part is "In
23 addition, the legislature has done little to
24 regulate access to and use of tobacco," and I
14:14 25 assume you're addressing minor usage?

14 1 A. Yes.

2 Q. And where is it that you get the
3 information to formulate an opinion that the
4 legislature has done little to regulate access
14:14 5 to and use of tobacco?

6 A. Part of that was personal
7 experience. As a kid growing up I could
8 always buy it. There have been some studies
9 done, one of which I have summarized briefly
14:15 10 in a document that you have that bottom line
11 their conclusion there is that Texas is just a
12 minimum-effort state when it comes to trying
13 to keep tobacco out of the hands of minors.

14 Q. And which document is it that
14:15 15 you're referring to?

16 A. The one headed Assessing Texas
17 Public Policy Regarding Tobacco and Smoking.

18 Q. All right. We'll get to all
19 those.

14:15 20 A. Okay.

21 Q. This other document that you
22 brought with you today called "Tobacco/Smoking
23 Programs in Texas Public Schools" --

24 A. Yes.

14:15 25 Q. -- how is it different from the

14:15 1 one that you had previously produced in this
2 case?

3 A. I had added one additional
4 textbook of more recent origin.

14:16 5 Q. Do you remember which one it was?

6 A. The last one on the list.

7 Q. You just supplemented this
8 eight-page list?

9 A. Yes. What I had done earlier, I
14:16 10 think the most recent citation in a textbook
11 was probably about 19, I don't know, '48 or
12 so. Bottom of page 4, last two entries.

13 Q. All right.

14 A. And then I came across a later one
14:16 15 the other day that just seemed to me that I
16 should include in this one.

17 Q. And where is that one?

18 A. It's the very last one called
19 "Health Focus on You."

14:16 20 Q. Okay.

21 A. By Meeks and Heit. Those are the
22 only differences. There's no real substantive
23 difference between what -- the way that one
24 treats it and some of the earlier ones.

14:17 25 Q. I'm going to mark this as -- the

17 1 document we're talking about as Elliott 3.

2 A. As what? 3?

3 Q. 3, yes.

4 A. Can I do the same thing with mine?

14:17 5 Q. You can if you want.

6 A. For the sake of keeping up with
7 each other.

8 (Deposition Exhibit 3
9 was marked.)

14:17 10 Q. (By Mr. Schwartz) Let's look at
11 Opinion Number 4 on Exhibit 1.

12 A. Okay.

13 Q. "Given the State's belief
14 regarding the health risks and costs
15 associated with tobacco, and the State's
16 response to particular information at the time
17 such information was available to the State,
18 and considering the nature of the democratic
19 process, it is doubtful that the legislative
20 process would have been materially altered by
21 any additional disclosure of information by
22 the tobacco industry. Further, it is
23 impossible to predict with any reasonable
24 certainty that any additional disclosure would
18 25 have made a difference, and impossible to say

14:18 1 what difference, if any, any additional
2 disclosure would have made." That's the sum
3 and total of Opinion Number 4, right?

4 A. (Witness nods.)

14:18 5 Q. Is that yes?

6 A. Correct. I'm sorry.

7 Q. The -- let's take it part by part
8 and make sure I understand.

9 A. Okay.

14:18 10 Q. The first part, "Given the State's
11 belief regarding the health risks and costs
12 associated with tobacco," now that ties in,
13 does it not, with Opinion Number 1 where you
14 state, in your opinion, "The state has had
14:18 15 long-standing beliefs regarding potential
16 health risks and potential healthcare costs
17 associated with tobacco."

18 A. Right.

19 Q. You're just restating that?

14:18 20 A. I think that says, in effect,
21 given the state of the State's knowledge about
22 it.

23 Q. All right. And then -- well, it's
24 really just repeating Opinion Number 1, is it
14:19 25 not?

14:19 1 A. In part.

2 Q. That particular portion of it,
3 yes?

4 A. Yes.

14:19 5 Q. "And the State's response to
6 particular information at the time such
7 information was available to the State," now
8 we're talking about two years ago we've had
9 new information from the industry's forced
14:19 10 disclosure of withheld information?

11 A. I think in terms of that part of
12 the opinion, I would probably want to go back
13 further than that --

14 Q. Okay.

14:19 15 A. -- to the surgeon general's report
16 in '64 as well.

17 Q. That's what you had in mind?

18 A. I think so. I think what I had in
19 mind here was the sum total of most of the
14:19 20 modern revelations and information on that.

21 Q. Okay. So are we talking
22 everything up to two years ago?

23 A. I think that probably includes two
24 years ago as well.

14:20 25 Q. All right. So everything from

14:20 1 anywhere in the past to present?

2 A. They seem not to have acted very
3 much.

4 Q. All right. When you say
14:20 5 particular information, that's what you were
6 referring to when you said the surgeon
7 general's report? You don't think the State
8 reacted appropriately or timely to the surgeon
9 general's report?

14:20 10 A. No, I don't.

11 Q. Is there anything else that you
12 were addressing when you said "particular
13 information"?

14 A. Well, I guess I was thinking too
14:20 15 about the revelations that the tobacco company
16 executives made in their testimony. But at
17 the time that I was thinking about this and
18 working on it, we -- the legislature had
19 not -- the legislative session was not over
14:21 20 and I think the legislature is reacting to
21 something, did react to some additional
22 information and/or pressures with the bill
23 that they passed this last session.

24 Q. Do you, based on your training,
14:21 25 education, and experience, know why or have an

14:21 1 opinion why the legislature was successful
2 this past legislative session in enacting such
3 legislation and was not successful before?

4 A. I think that the legislature has a
14:22 5 very heavy responsibility to discharge every
6 biennium in a fairly short period of time.
7 And I think what happens is that, to a very
8 great extent, that demands from perhaps public
9 opinion, clearly from some of the anti-smoking
14:22 10 groups and so forth, force the legislature to
11 raise this subject somewhere on its list of
12 priorities.

13 Now the Sinar Amendment and the
14 requirement that we raise the minimum smoking
14:22 15 age kicked in a little bit earlier, but there
16 is a -- in my experience, there's a kind of
17 process that happens in the legislature that
18 there are certain kinds of things that have to
19 be dealt with in a particular session. They
14:23 20 have to do the budget, for instance. There
21 are some other things that get placed higher
22 or lower on the list of priorities because we
23 acquire information, because public opinion
24 begins to develop, because interest groups
14:23 25 develop further. And there's a period of time

14:23 1 that the legislature has these proposals that
2 it generally doesn't begin to break into new
3 policy areas until a period of time has
4 passed, we develop additional pressures.

14:23 5 I think the tort reform
6 legislation started in late '89 and came on
7 through the 74th legislature is a good example
8 of that. I suspect there is something of the
9 same sort of evolutionary process that's
14:23 10 occurred with regard to tobacco issues.

11 Q. One part of this Opinion Number 4,
12 the next part says that "it is doubtful
13 that" -- considering the democratic process,
14 "it is doubtful that the legislative process
14:24 15 would have been materially altered by any
16 additional disclosure of information by the
17 tobacco industry." Now we've already covered
18 the fact that you believe that even if
19 nicotine and concealed testing had been
14:24 20 revealed earlier it wouldn't have made a
21 difference in your opinion?

22 A. I don't know. I think it just --
23 it's hard to say. It may be that what
24 happened in the 75th legislature is the result
14:24 25 of that.

14:24 1 Q. Right. Also you just stated that
2 public opinion and special interest put
3 demands on the legislature?

4 A. Sure they do.

14:24 5 Q. Force them to do certain things?

6 A. We agreed to that earlier.

7 Q. If, in fact, the public learns
8 these studies, of which the results were not
9 disclosed by the industry, that indicate that
14:25 10 their product really is harmful or the fact
11 comes out that the industry had increased
12 nicotine levels in cigarettes to make them
13 more addictive, that's the type of information
14 that could sway public opinion and motivate
15 them as the public and special interest groups
16 to put that type of pressure and demand on the
17 legislature in order to make changes?

18 A. Yes.

19 Q. And you say "Further, it is
14:25 20 impossible to predict with any reasonable
21 certainty that additional disclosure would
22 have made a difference, and it's impossible to
23 say what difference, if any," it "would have
24 made," but I think that you would agree with
25 me that it really depends on what type of

14:26 1 disclosure the industry might have made. It's
2 difficult -- is that not true?

3 A. Yes. I think conceivably there
4 are some kinds of disclosures that might have
14:26 5 been so horrendous that they would have
6 mobilized public opinion.

7 Q. That's right. Or taking a
8 position publicly and having another position
9 privately or -- and we continue to go back to
14:26 10 bumping up nicotine levels or hiding the
11 results of their own research or lying about
12 the results of their own research, those types
13 of things could drastically affect the
14 legislative process and at that point we still
14:26 15 don't know what it would do to -- we know it
16 probably would be anti-tobacco; is that fair
17 to say?

18 A. Yeah. Probably.

19 Q. Opinion Number 5, "There was no
14:26 20 State agency responsible for restricting minor
21 access to, or use of, tobacco until 1993."
22 What is the State agency now that's
23 responsible for restricting minor access to,
24 or use of, tobacco?

14:27 25 A. Well, local law enforcement

1 officials have been given authority to do
2 that.

3 Q. Because penalty -- criminal
4 penalties have been assigned to the youth?

14:27 5 A. Both to the youth, to the selling
6 clerk, and to the selling firm.

7 Q. But not to the industry?

8 A. Not to the industry.

9 Q. Do you fault the State for that or
14:27 10 the legislature?

11 A. For not --

12 Q. Penalizing the industry each time
13 a youth is caught purchasing cigarettes. When
14 I say "youth," any underage person.

14:27 15 A. Under age of 18? No, I don't
16 fault the legislature for that.

17 Q. Number 6 says "All efforts to
18 dedicate" -- or the State for that matter,
19 right? You're not faulting our State
20 government, the legislature, any three
21 branches of government for not penalizing the
22 tobacco industry when a underage person
23 purchases cigarettes?

24 A. I think the only way we could do
25 that would be through the legislature.

14:28 1 Q. Okay. So the answer is no?

2 A. No.

3 Q. Number 6, "All efforts to dedicate
4 tobacco tax revenue to tobacco control
14:28 5 programs have been rejected," until recently.

6 A. Until recently.

7 Q. So this is outdated already? You
8 must have written this before that point in
9 time when excise tax revenue has been directed
14:29 10 or dedicated or used for social purposes?

11 A. I'm not aware that we dedicated
12 any this last session.

13 Q. I know you've done a lot of work
14 on the history of excise taxes, and we're
14:29 15 going to get to that. And so let's reserve
16 our discussion about Opinion 6 until we get to
17 that because that's a big area. Okay?

18 A. Okay.

19 Q. Let's look at Number 7. Tobacco
14:29 20 company -- we already covered 7, talking about
21 the First Amendment.

22 Number 8, "The tobacco industry is
23 not among the top political contributors," and
24 I assume you're talking about in the State of
25 Texas?

14:29 1 A. In the State.

2 Q. Do you have any expertise on the
3 national level, on the federal level?

4 A. No. None other than what I've
14:29 5 read in the media.

6 Q. You don't -- you're not testifying
7 that your opinions given here in some way
8 apply on the federal level also?

9 A. No.

14:30 10 Q. "The tobacco industry is not among
11 the top political contributors." You're
12 referring to all political candidates or what?

13 A. Legislative candidates. And I
14 suppose in the governors' races, too.

14:30 15 Q. "Especially when compared to
16 health-related and anti-tobacco interest
17 groups which make greater contributions than
18 does the tobacco industry." Where did you get
19 this information?

14:30 20 A. It came out of a listing in part
21 of contributing groups in the State of Texas,
22 lobbyists. It also came in terms of
23 information that I have gleaned from friends
24 and relations and people in the legislature
4:31 25 and the media about TMA contributions.

14:31 1 Q. And what you gleaned from friends
2 would be authoritative or just informative?

3 A. Just informative.

4 Q. Anything from what you might have
14:31 5 gleaned in the community that you would
6 consider authoritative rather than just
7 informative?

8 A. No. Not particularly. People
9 that I have worked with in legislative
14:31 10 campaigns seemed not -- again seemed, I don't
11 know that I ever questioned any of them
12 specifically, seemed not to have gotten any
13 help or any particular opposition from the
14 tobacco industry.

14:31 15 Q. Have you ever observed the tobacco
16 lobby in action in the State of Texas?

17 A. No.

18 Q. Have you ever set out to do that?

19 A. No.

14:31 20 Q. And have you ever queried any
21 colleagues, friends, legislators, or anybody
22 else about the lobby activities by the tobacco
23 industry?

24 A. No.

14:32 25 Q. Not prepared to give an opinion

1 one way or the other about any lobby activity
2 of any member of the tobacco industry?

3 A. No.

4 Q. That means you're not -- you're
4:32 5 not prepared to give an opinion about that?

6 A. No. I can -- I will tell you
7 this: That -- and this is simply a personal
8 opinion based on observations of how interest
9 groups in general work. It's not based on any
4:32 10 hard data or scientific evidence, but I do
11 know that there are any number of interest
12 groups in the State that are what we call
13 umbrella groups, or basically they incorporate
14 a lot of different kinds of interests from a
4:32 15 number of different industries. An educated
16 guess would say it's -- somewhere along the
17 line people interested in tobacco would have
18 been involved at some level.

19 Q. Okay.

4:33 20 A. But that's not -- the principal
21 source of this is basically from that printout
22 that I got on contributions, primary givers.

23 Q. In what time period is this
24 referring to?

4:33 25 A. Oh, about the last I guess two

14:33 1 legislative races. I would have to go back
2 and look at my printout that I've got to nail
3 that down. It's of recent origin.

4 Q. Within the last decade?

14:33 5 A. Yeah. At least.

6 Q. And this publication was just
7 something that was generated this year?

8 A. I believe it was. I had asked for
9 it.

14:33 10 Q. From Mr. Hull?

11 A. Well, actually I had asked for it
12 from a research assistant that I had here in
13 Austin.

14 Q. Someone connected with your
14:34 15 university or someone independent of the
16 university?

17 A. Independent.

18 Q. Someone that helped you gather
19 information for your testimony in this case?

20 A. Helped me gather, right, did
21 research. I had one research assistant
22 operating with me in Commerce and one down
23 here in Austin.

24 Q. And did you make the contact with
14:34 25 both of them and hire both of them to do that?

14:34 1 A. Yes, I did.

2 Q. Were they paid to do that or was
3 it something they did --

4 A. No, they were paid.

14:34 5 Q. And did you pay them directly?

6 A. I paid -- in one case, the one in
7 Commerce, I simply billed her services to the
8 firm here when I billed my own. That was my
9 wife.

14:34 10 Q. Okay.

11 A. And the other one filed his bill
12 separately, the one here.

13 Q. Are the amounts that you paid them
14 included in the 25,000 that you have been paid
14:35 15 or are they separate and apart above that?

16 A. The amount that was paid to my
17 wife was included in that. The amount that
18 was paid to the other RA was not.

19 Q. RA?

14:35 20 A. Research assistant.

21 Q. All right. And is that research
22 assistant somebody who you've worked with in
23 the past?

24 A. No. It's just somebody that I
14:35 25 know --

14:35 1 Q. Okay. Who is it?

2 A. -- I trust. Fellow by the name of

3 Armstrong.

4 Q. What is -- what is it?

14:35 5 A. I'm trying to think of his first

6 name. Tom Armstrong.

7 Q. And what does Mr. Armstrong do?

8 A. He's a local attorney.

9 Q. Mr. Elliott, have they -- meaning

14:35 10 they, Mr. Hull, asked you to give any opinions

11 based on the testimony of any State witnesses,

12 expert or fact witnesses?

13 A. No.

14 Q. Have they had you review any of

14:36 15 the State's expert witnesses and formulate any

16 opinions based on their testimony?

17 A. I have a report that was given --

18 that was done for them by James Vinson on

19 demand elasticity, the impact of excise taxes,

14:36 20 so forth.

21 Q. And did you formulate any opinions

22 about Mr. Vinson's report?

23 A. Reinforced some opinions that I'd

24 picked up from some other sources.

14:36 25 Q. Do you know Mr. Vinson?

14:36 1 A. No. Not that I know of.

2 Q. This disclosure document that's
3 marked as the Exhibit 1 --

4 A. Uh-huh.

14:36 5 Q. -- on the second page, Roman
6 numeral II, it says "Documents Reviewed By
7 Expert" and it says "See attached list." Then
8 we go to this extensive list of documents that
9 we were talking about --

14:37 10 A. Uh-huh.

11 Q. -- initially in your deposition,
12 right?

13 A. I'm sorry?

14 Q. The documents reviewed by you are
15 the ones that are listed on this extensive
16 list attached to the back of the first page?

17 A. I believe that every single thing
18 I have on my list is on this list and
19 that's -- I've not had an opportunity to
14:37 20 review this entire list, but I think they are.

21 Q. It's an overstatement if it says
22 documents reviewed by; it should say documents
23 supplied to or provided to the expert?

24 A. This one?

14:37 25 Q. Yes, sir. Look at the second page

14:37 1 where it says that under Roman numeral-II.

2 A. Uh-huh.

3 Q. Is that overstated there?

4 A. Yes. Yes, it is.

14:37 5 Q. And I know we got your CV. And
6 your resume, we'll look at that in a minute,
7 it has all the articles and books that you've
8 authored. And I noticed -- let's go ahead and
9 look at that now, because I noticed that they
14:38 10 have to do with political science, right, for
11 the most part?

12 A. Yes.

13 Q. But they don't have to do with
14 tobacco?

14:38 15 A. Correct.

16 Q. They don't have to do with excise
17 taxes?

18 A. That's correct.

19 Q. Is that fair to say?

14:38 20 A. Uh-huh.

21 Q. And they don't have to do with --
22 I didn't see where one might, and correct me
23 if I am wrong, they did not have to do with
24 the influences on the legislature by public
14:38 25 opinion, special interest, or those other

1 entities or persons that we talked about
2 earlier?

3 A. I think we touched on both of
4 those in both of the textbooks that I've
4:38 5 coauthored.

6 Q. All right. So Texas Government
7 Today?

8 A. And the new one.

9 Q. What's the new one?

4:39 10 A. Is it not on there?

11 Q. Well, tell me what the name of it
12 is and I'll find it.

13 A. It's called The World of Texas
14 Politics. It came off the presses in August.

4:39 15 Q. Yes.

16 A. I thought I had it on there as a
17 work in progress.

18 Q. It is. It's at the top.

19 A. Also the fees -- the two articles
4:39 20 I've done on the Texas Trial Lawyer
21 Association get into that as well.

22 Q. Okay. And where are those listed
23 on here? What's the --

24 A. Can I see that a minute? I don't
39 25 have a copy of that with me.

14:39 1 Q. I was trying to find a clean
2 copy.

3 A. Here, the second one. However,
4 what should also be added to that is that
14:39 5 there was a revised -- that was the first
6 edition of that book and I have revised that
7 article and it will be in the second edition,
8 which I'm assuming will have a '98 copyright
9 and come out in the spring. And both of those
14:40 10 are essentially legislative studies of what's
11 gone on with the trial lawyers and the tort
12 reform issues and things.

13 Q. Would there be anything in either
14 of those books that would contradict any of
14:40 15 your opinions that you've given here today?

16 A. I don't think so.

17 Q. Remember when we were talking
18 about the different depositions that you might
19 have reviewed?

14:40 20 A. Yes.

21 Q. I want to go back to that for a
22 minute. Let's see. Do you know who Diane
23 Satterwhite is?

24 A. No. I recall seeing a deposition
14:41 25 that she'd done.

4:41 1 Q. Do you recall anything about it?

2 Did you read it?

3 A. I don't think that's one I read.

4 Q. What about Beth Taylor? Did you
4:41 5 read her deposition?

6 A. No.

7 Q. Do you know who Beth Taylor is?

8 A. No.

9 Q. Dean Ferguson?

4:41 10 A. Yes. I read his.

11 Q. What did you get from Dean
12 Ferguson's deposition?

13 A. Not a hell of a lot.

14 Q. Did you read it because you
4:41 15 thought he was the dean of some school
16 somewhere?

17 A. No, no. I knew who he was. I
18 could tell from the introduction. I think
19 Ferguson was trying to justify how they
4:42 20 arrived at their estimates and the way they
21 developed budget estimates.

22 Q. What about Carol Daniels? Did you
23 read her deposition?

24 A. No.

4:42 25 Q. Michael Ressig?

14:42 1 A. No.

2 Q. Sharon Thompson?

3 A. I don't think so.

4 Q. Chuck Hardy?

14:42 5 A. No.

6 Q. Robert Bernstein?

7 A. Yes.

8 Q. Anything about Mr. Bernstein's
9 deposition that you remember?

14:42 10 A. Well, just that he had had a hard
11 time trying to maintain the organization and
12 to get it funded properly.

13 Q. Which organization?

14 A. Texas Department of Health.

14:42 15 Q. What about Ron Todd?

16 A. Didn't read that.

17 Q. Sharon Kohout?

18 A. Spell it.

19 Q. K-o-h-o-u-t.

14:43 20 A. I don't think I read that one.. I
21 skimmed it, but I didn't --

22 Q. Do you remember anything about it?

23 A. No.

24 Q. Wade Anderson?

14:43 25 A. No.

14:43 1 Q. Liang Liu or Liu, L-i-u?

2 A. No. I couldn't pronounce it

3 either.

4 Q. Dick Spence?

14:43 5 A. No.

6 Q. Jim McDade?

7 A. No.

8 Q. Pam Coleman?

9 A. No.

14:43 10 Q. David McNutt?

11 A. Wait a minute. Let's go back to

12 Coleman.

13 Q. Pam Coleman?

14 A. I read that one.

14:43 15 Q. All right. Do you remember

16 anything in particular about it?

17 A. No.

18 Q. David McNutt, did you read his?

19 A. No.

14:43 20 Q. David Cook?

21 A. No.

22 Q. Jane Maxwell?

23 A. No.

24 Q. Billy Kirby?

14:43 25 A. No.

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14:43 1 Q. Katherine McElveen, M-c capital
2 E-l-v-e-e-n?

3 A. Yes, I did read that.

4 Q. Did you glean anything from that
14:43 5 or remember anything about it?

6 A. Well, her concern was over
7 elasticity of demand in response to price
8 changes. And her notions about that is that
9 there was some elasticity but not a great
14:44 10 deal. And so -- well --

11 Q. Who does she work for?

12 A. I don't remember who she was
13 employed by.

14 Q. You don't recall where her
14:44 15 perspective is from, in other words?

16 A. I guess probably -- well, I don't
17 know. I don't know.

18 Q. Lisa Minton?

19 A. No.

14:44 20 Q. Did you read Christopher Koenig or -
21 Koenig, K-o-e-n-i-g?

22 A. No.

23 Q. Cindy Alexander?

24 A. No.

14:44 25 Q. Riley Tilley?

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14:44 1 A. No.

2 Q. Sonny Allcorn?

3 A. No.

4 Q. Alan Pollock?

14:44 5 A. No.

6 Q. Andrea Cowen, C-o-w-e-n?

7 A. No.

8 Q. Greg Hartman?

9 A. No.

14:44 10 Q. Carl Parker?

11 A. Yes.

12 Q. Did you get anything out of

13 Senator Parker's deposition that you remember?

14 A. There wasn't a whole lot of

14:45 15 information in Parker's. He was not terribly

16 forthcoming in that deposition. As I recall,

17 he covered some of the same ground that Brooks

18 did over the difficulties of the legislative

19 process and how they allocate resources.

14:45 20 Q. You understand that the questions

21 asked in Senator Parker's deposition were not

22 asked by the same person who asked the

23 questions in Senator Brooks' deposition?

24 A. No. I was not aware of that.

14:46 25 Q. Did you read these minutes on the

14:46 1 Texas Interagency Council on Smoking and
2 Health? Look on page 27.

3 A. Let me look at my summaries.

4 Q. Okay.

14:46 5 A. If I didn't put them in there,
6 they're not.

7 Q. Okay.

8 A. I read quite a bit about the Texas
9 Interagency, but I don't recall if I read or
14:46 10 incorporated anything from the minutes in
11 there. I don't -- I don't think I did, no.

12 Q. What about the tobacco lobbyist
13 compensation reports? Did you review those?

14 A. No.

14:47 15 Q. You didn't try to verify or
16 validate the information that you got out of
17 the -- from the media?

18 A. Just didn't have time to get to
19 it.

14:47 20 Q. It wasn't important, you felt that
21 was authoritative enough, the fact the media
22 reported it?

23 A. Wouldn't know until I get into it.

24 Q. Did you make an assumption one way
14:47 25 or the other that it was accurate?

14:47 1 A. No. I just didn't get into it.

2 Q. Did you review any of the lobby --
3 or lobbyist registration and renewal forms?

4 A. No, I didn't.

14:47 5 Q. Do you even know who the tobacco
6 lobbyists were or are in Texas?

7 A. I don't think I do.

8 (Deposition Exhibit 4
9 was marked.)

14:48 10 Q. (By Mr. Schwartz) Elliott 4, the
11 list was produced with those checks on it.
12 What significance do those check marks have?
13 First of all, I might ask, did you put those
14 check marks on there?

14:48 15 A. I put those on there.

16 Q. What significance do they have?

17 A. I wanted to make sure that the law
18 firm had copies of all of those things that I
19 had checked.

14:49 20 Q. Okay. They produced them to you
21 but you wanted to make sure that they had
22 them?

23 A. I produced some of them myself.

24 It was a mixed bag. They would submit some
25 when I requested and then I would -- Tom

14:49 1 Armstrong and my wife would produce other
2 documents.

3 Q. What percentage of the documents
4 that Mr. Armstrong and/or your wife gathered
14:49 5 for you did you review?

6 A. I have no idea. For one thing, a
7 lot of them came from all three sources from
8 time to time. So it's mixed.

9 Q. Are you prepared to render any
14:49 10 opinions on the Texas Medicaid program?

11 A. No.

12 Q. Have you been asked to render any
13 opinions on the issue of fraud, waste, and
14 abuse in the Texas Medicaid program?

14:50 15 A. No.

16 Q. You're not going to do that, are
17 you?

18 A. No.

19 (Deposition Exhibit 5
20 was marked.)

21 Q. (By Mr. Schwartz) I have in my
22 hand Elliott 5 which --

23 A. What's the topic at the top of the
24 page?

14:50 25 Q. It's entitled "Tobacco Legislation

14:50 1 Enacted by the 75th Legislature."

2 A. Okay.

3 Q. And then behind that is the
4 summary of tobacco taxation and regulation
14:50 5 from the 22nd legislature through the 74th
6 legislature.

7 A. Right.

8 Q. You compiled this list on your
9 own?

14:50 10 A. No.

11 Q. With the help of Mr. Armstrong and
12 your wife?

13 A. No. I requested that the law firm
14 compile that list for me.

14:50 15 Q. Well, why does the title say
16 "Tobacco Legislation Enacted by the 75th
17 Legislature, Regular Session, 1977, compiled
18 by Charles P. Elliott, Ph.D."?

19 A. Because I compiled this document.

14:51 20 Q. All right. And the document that
21 goes from the 22nd legislature through the
22 74th says by Charles P. Elliott, Ph.D. But
23 actually it's by Hull and company, somebody in
24 the law firm?

151 25 A. I compiled this document. They

14:51 1 provided the raw materials for it. That's the
2 one I was telling you a minute ago.

3 Q. All right. So you typed it?

4 A. I did the analysis and then I put
14:51 5 the document together.

6 Q. Okay. In fact, what's marked as
7 Elliott 5 that you have just been holding up
8 is compiled by you, it's just the information
9 was supplied by Mr. Hull?

14:51 10 A. That's right.

11 Q. You read all the information or
12 what you felt was necessary and created the
13 summaries that are shown in Elliott Number 5?

14 A. Correct.

14:52 15 Q. And that's all Number 5 is is
16 summaries of what these bills that he provided
17 you reflect?

18 A. That's right.

19 Q. And do you know who it was who
14:52 20 actually ran this legislative bills list or
21 created it?

22 A. I do not.

23 Q. You don't know where it came from?

24 A. I got it from Mr. Hull.

25 (Deposition Exhibit 6
was marked.)

1 Q. (By Mr. Schwartz) All right. I'm
2 going to mark that as Elliott Number 6. And
3 the other question I want to ask you about
4 Elliott Number 6 is: Did you do anything on
5 your own or with the help of your wife or
6 Mr. Armstrong to verify the material -- or
7 verify the accuracy of the material contained
8 in Elliott Number 6?

9 A. Some of it, yes. Some of it we
4:53 10 had obtained prior to myself, the document.

11 MR. MACRAE: Bob, to make
12 sure this is accurate, do you mind if he takes
13 a look at that to verify to make sure it's --

14 MR. SCHWARTZ: No. Not at
4:53 15 all.

16 A. This appears to be what -- the
17 document I received.

18 Q. (By Mr. Schwartz) These are all
19 right from the disclosure package that we
4:53 20 received from Mr. Hull.

21 A. I don't see anything in there
22 that's any different.

23 Q. Do you remember what in particular
24 you might have verified on your own?

1:53 25 A. We verified the legislation

14:53 1 establishing the -- when the excise tax was
2 first imposed and how much. We also verified
3 the legislation.

4 Q. Back in the 1800s, you mean?

14:53 5 A. No. The first excise tax was
6 1930's, '31. We verified the original
7 legislation that prohibited sales to persons
8 under the age of 16. Some of those landmark
9 documents like that we have picked up
14:54 10 basically through the university library where
I work.

12 Q. Was there anything in here that
13 you found to be inaccurate?

14 A. Not that I know of.

14:54 15 Q. Did you find anything in here that
16 you would consider to be less than factual?

17 A. Not that I know of.

18 Q. Was there any editorial comment in
19 here? When I say "in here," in Exhibit 6?

14:54 20 A. There is. As I recall in there
21 somewhere on one bill, whoever wrote it said
22 I'm not sure why this is in here or
23 something. I couldn't tell you where that
24 is. We could find it if we had enough time.

14:55 25 Q. In each one of these items listed

14:55 1 in Exhibit 6, says -- it's got a number
2 stating which session it was and what year the
3 session was. It's got a house bill or senate
4 number or some identification and an author,
5 right?

6 A. Yes.

7 Q. That's how it starts off across
8 the page. That's true?

9 A. Yes.

14:55 10 Q. And then it says last action, and
11 that's -- what do you understand that to mean?

12 A. That's where the bill finished out
13 the session, whether it died, whether it
14 passed. If it's signed by the governor, it
14:55 15 was passed into law.

16 Q. Speaking of legislation dying, how
17 many ways can you think of that legislation
18 can fail to get through the process?

19 A. I can think of about 13 or 14 that
20 are associated with the way I teach the course
21 about Texas politics and the Texas
22 legislature. And these simply amount to the
23 different steps that a bill has to go through
24 before it passes into law.

14:56 25 Q. In your teaching, do you expound

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14:56 1 on the role of the lobby in the bill's life or
1 longevity through the process?

3 A. Yes.

4 Q. And you tell your students in
14:56 5 fact, do you not, that the lobby does have
6 quite a role in the speed with which a bill
7 passes through the process or whether it even
8 survives the process?

9 A. Yes.

10 Q. They do, in fact, have an
11 influence on the legislative process?

12 A. Yes.

13 Q. Every lobby that has that effect
14 can have an effect on the legislative process,
14:56 15 can they not?

16 A. I'm not sure about that.

17 Q. A well-organized and well-funded
18 lobby and well-represented lobby can do that?

19 A. If it is also within the general
14:57 20 realm or social respectability.

21 Q. That's a matter of subjective
22 opinion, isn't it?

23 A. That's -- well, not entirely. But
24 for instance, the casino lobby did not do
14:57 25 well -- has not done well the last two or

14:57 1 three sessions and that's partly I think
2 because that's simply not an acceptable notion
3 to a great many people in the state.

4 Q. The tobacco lobby has affected
14:57 5 legislation, has it not?

6 A. I don't know.

7 Q. Do you know if the liquor lobby
8 has affected legislation?

9 A. I am convinced that it has.

10 Q. Do you know if the teachers'
11 association, state teachers' association has
12 affected legislation, either through
13 registered lobbies or through its own
14 presence?

14:58 15 A. Yes, it has.

16 Q. They certainly have affected the
17 political process?

18 A. We might differ over how much, but
19 it has affected them.

20 Q. They have unseated governors in
21 the past, have they not?

22 A. I don't know.

23 Q. They've contributed to that?

24 A. They certainly contributed to Mark
14:58 25 White's defeat.

14:58 1 THE VIDEOGRAPHER: Excuse
2 me. I need to change tapes.

(A recess was taken.)

4 THE VIDEOGRAPHER: We're on
15:04 5 the record.

6 Q. (By Mr. Schwartz) We were talking
7 about Elliott Exhibit 6 and I was asking you
8 questions relating to the insertion of
9 editorial comments. I want to ask you another
15:04 10 question. Only in a few instances did you
11 attempt to verify the information contained in
12 here, right?

13 A. Right.

14 Q. Did you attempt to verify any of
15 the subject matter that's stated in the area
16 where it says purpose to determine how much
17 editorial comment might be involved in that or
18 how accurate the reporting was?

19 A. No. But in some of the later
15:04 20 legislation that was proposed, there had been
21 some coverage, at least, in the media and in
22 some occasionally I would -- I do on the job
23 review house and senate journals so I didn't
24 detect any serious problems.

15:05 25 Q. I'm going to hand you Exhibit 6

1 and let's flip through a few of them, okay?

2 A. Okay.

3 Q. I'm going to do this randomly
4 starting from the back. The -- let's go to
15:05 5 page -- do you see where it says at the bottom
6 "146 of 151"? We're going to page 146.

7 A. Uh-huh. Yes.

8 Q. The last entry there is a bill
9 that was signed by the governor on June 13,
15:05 10 1995, effective immediately, right?

11 A. Yes.

12 Q. It was one that -- Senate Bill 10
13 from 1995, right?

14 A. Yes.

15:06 15 Q. Down in the purpose area the last
16 sentence reads "The bill mandates that the
17 system minimize and control costs to the State
18 on Medicaid, and also that it maximizes the
19 opportunity of federal matching funds and
15:06 20 allows or even mandates the use of managed
21 care to control costs in delivering Medicaid
22 services"; is that accurate?

23 A. That's what my copy says.

24 Q. Okay. I read it accurately,
25 right?

15:06 1 A. Correct.

2 Q. Is that accurate?

3 A. I have no idea.

4 Q. Do we even know if the person who

15:06 5 compiled this list or put this report together

6 took this information directly from a source

7 or inserted editorial comments?

8 A. As I said earlier, there was --

9 there was at least one place I can recall

15:07 10 where there was an editorial comment or at

11 least a question about -- I'm not sure what's

12 going on here or what's being said.

13 Q. You don't know --

14 A. I don't.

15:07 15 Q. -- where the person who compiled

16 this report got the information for the

17 purpose category, right?

18 A. No, I don't know.

19 Q. The reason I ask these questions

15:07 20 is if you look at that last sentence, the

21 next-to-the-last line it says "or even

22 mandates." Well, I wonder where he got "or

23 even mandates." Did you wonder about that?

24 A. No.

15:07 25 Q. You read this you didn't wonder

11:07 1 how someone might have, for the lack of a
2 better word, dramatized the comment or the
3 material that's being reported?

4 A. I was not particularly concerned
15:08 5 with this specific bill.

6 Q. All right. Well, in any of these
7 bills, did you have a question or concern
8 about whether the author embellished or the
9 reporter embellished or enhanced or somehow
15:08 10 put a spin on any of the matter that's
11 reported herein?

12 A. No. I wasn't concerned with that.

13 Q. It wouldn't affect your opinions
14 one way or the other if they had?

15:08 15 A. No. Basically what I was looking
16 at, what the general purpose of the bill
17 seemed to be and whether or not it passed or
18 whether it didn't pass.

19 MR. MacRAE: Why don't you
15:09 20 put the clip back on that so it won't get
21 jumbled.

22 Q. (By Mr. Schwartz) I'm going to
23 hand you what I marked as Elliott 7 and ask if
24 you can identify that for me, please.

11:09 25 (Deposition Exhibit 7
was marked.)

15:10 1 A. It appears to be a copy of
2 document that I received I can't say when.
3 Recently, as I recall.

4 Q. (By Mr. Schwartz) Is this
15:10 5 something that you received from Mr. Hull?

6 A. Mr. Hull or Mr. MacRae.

7 Q. When you -- I'm sorry. When you
8 received this information, did you read it?

9 A. I glanced at it.

10 Q. Anything that's contained in
11 Exhibit 7 form, in whole or in part, any part
12 of your opinions that you've given in this
13 case today?

14 A. No.

15 Q. I hand you what I've marked as
16 Exhibit 8.

17 (Deposition Exhibit 8
18 was marked.)

19 Q. (By Mr. Schwartz) Where did you
20 get that from?

21 A. I got this from Mr. Hull or
22 Mr. MacRae.

23 Q. And did you use Exhibit 8 in
24 formulating your opinions in whole or in part?

25 Q. A. No.

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15:11 1 Q. Is this not a part of Exhibit 7?

2 A. I don't know.

3 Q. Or is it separate?

4 A. I don't know.

15:12 5 Q. Have you seen --

6 A. If we look at the dates down here,
7 one says 10 April, the other one says March
8 18. I'm assuming that those are separate.

9 Q. All right. If we were to mark
15:12 10 this as Exhibit 9, can you tell me if any of
11 the information contained in Exhibit 9 was
12 used in formulating, in whole or in part, your
13 opinions given today?

14 A. No.

15:12 15 (Deposition Exhibit 9
16 was marked.)

17 Q. (By Mr. Schwartz) I hand you what
18 I've marked as Elliott 10. That's again a
19 document that you compiled, right?

20 (Deposition Exhibit 10
21 was marked.)

22 A. Yes.

23 Q. (By Mr. Schwartz) Where did you
24 get the information?

15:13 25 A. I got it from various and sundry

15:13 1 documents that I had dug up, that my research
2 assistants had dug up, and that had been
3 submitted to me by the law firm. This is a
4 collection of any number -- from any number of
15:13 5 sources. Oh, and a colleague in the
6 department of economics at A & M Commerce.

7 Q. What is the colleague's name?

8 A. Steve Schwiff.

9 Q. What does Mr. Schwiff do?

15:14 10 A. He's an economist.

11 Q. Is he one of the staff at the
12 university or the college?

13 A. Yes. He's faculty.

14 Q. Do you see on the first page of
15:14 15 that last exhibit, Exhibit 10 down -- up from
16 the bottom it says Legislative Task Force on
17 Cancer in Texas?

18 A. Yes.

19 Q. 1984?

15:14 20 A. Yes.

21 Q. You wrote that issue directly by
22 the task force endorsed by Speaker Gib Lewis?

23 A. Uh-huh.

24 Q. "Called on Congress not to reduce
15:14 25 the cigarette tax because they believed the

15:14 1 lower prices would increase demands for
2 cigarettes"?

3 A. Uh-huh.

4 Q. That's what we were talking about
15:15 5 earlier, right?

6 A. Yes. The flip side of it.

7 Q. And you stated it's clear that
8 both the supporters and opponents of higher
9 taxes on tobacco products believe that higher
15:15 10 taxes and higher prices for cigarettes will
11 reduce demand, correct?

12 A. Yes.

13 Q. Well, who are the supporters and
14 who are the opponents? Who are you referring
15:15 15 to?

16 A. Well, the opponents I guess would
17 be the people in the legislature who later
18 thought that a higher excise tax by Congress
19 would reduce demand. And a lot of the
20 anti-smoking groups have expressed the notion,
21 and this includes the American Cancer Society
22 and any number of the volunteer groups, that
23 higher prices will reduce demand and that's
24 one way to get at the reduction.

15:16 25 Q. Those are the supporters,

15:16 1 anti-smoking groups?

2 A. Yes. Uh-huh.

3 Q. Going back to our discussion
4 earlier when you talk about legislature being
15:16 5 opponents, you're talking about the people of
6 the State of Texas and special interest
7 groups, et cetera?

8 A. No. I'm talking about the
9 legislature in that resolution.

15:16 10 Q. Well, we went through that for a
11 good period of time earlier. Public opinion
12 and special interest groups are what force or
13 cause the legislature to do certain things.
14 They don't just act on their own for the most
15 part?

16 A. I don't know what role those
17 played here. All I know is that the
18 legislature passed the resolution.

19 Q. I know. We don't know what role
15:16 20 they played just like you don't know the
21 actual percentage of -- the legislature had --

22 A. Exactly.

23 Q. -- in imposing excise taxes or
24 enacting excise taxes. But my question is
15:17 25 talking about opponents, we're not just

15:17 1 talking about the legislature itself, we're
2 talking about the people of the state, we're
3 talking about the special interests in the
4 state, we're talking about a myriad of groups
15:17 5 or persons or entities that are not listed if
6 you're just talking about the legislature,
7 right?

8 A. Well, let's take this last line,
9 last sentence.

15:17 10 Q. Okay.

11 A. I have found that sentiment
12 expressed by people who have written both for
13 and against increases in the excise tax.

14 Q. So how do you figure? What do you
15 think about that? Have you come to any
16 conclusion about that?

17 A. Yes.

18 Q. How the same argument can benefit
19 or apply to both sides?

15:17 20 A. In some ways, yes. The people who
21 would like to reduce the incidence of smoking
22 believe that higher prices due to increased
23 taxes would help accomplish that. Some of the
24 people who have opposed the higher taxes and
15:18 25 higher prices as in HCR22 have also believed

15:18 1 that and they fear it because they fear the
2 reduction of revenues to the state.

3 Q. Sounds like the same side to me.

4 Is that what you're saying?

15:18 5 A. No.

6 Q. On the second page it says under
7 the Bob Bullock subcategory, that he proposed
8 raising the sales -- the state tax on
9 cigarettes and earmarking the resulting
15:18 10 revenue for hospital and Medicaid programs in
11 the state. That's 1989.

12 A. Uh-huh.

13 Q. Was that done?

14 A. I don't -- I'm trying to remember
15:19 15 when we raised the excise tax the last time.
16 I think it was about that time period. We did
17 not earmark any of the revenues for hospital
18 and Medicaid programs.

19 Q. These documents that you have
15:19 20 compiled are done by you in your own style and
21 at your own hand; is that not true?

22 A. Yes.

23 Q. And so --

24 A. These summaries that you see.

15:19 25 Q. They're not totally factual, they

15:19 1 do have the opinion or the subjective twist,
2 so to speak, of Charles Elliott in them?

3 A. What do you mean they have -- I --

4 Q. They reflect your viewpoints at
15:19 5 all or are they totally unbiased?

6 A. There's no such thing as totally
7 unbiased.

8 Q. All right. There's no line in
9 here that states a fact that is not readily
15:20 10 controverted one way or the other?

11 A. I don't know if that's true or
12 not. I would have to think about that a
13 while.

14 Q. Well, you're the one that decided
15 which portions to cite and quote from
16 different publications, right?

17 A. My job was to read this, to try to
18 decide what it means -- what it meant -- what
19 I thought it meant.

15:21 20 Q. You reported what you thought it
21 meant?

22 A. Sure.

23 Q. And you also --

24 A. What else would I report?

15:21 25 Q. I don't know. I don't know what

15:21 1 else you were asked to report.

2 A. Not a thing.

3 Q. You also pulled from these
4 articles or publications that you read certain
15:21 5 areas or pages or quotations because you've
6 cited them in here with page numbers and
7 you're the one who picked those and chose
8 those and restated those, right?

9 A. Uh-huh. That's correct.

10 Q. You didn't have anybody help you
11 with either the pulling of information, the
12 reviewing of this information, or the
13 reporting of the information?

14 A. No.

15 Q. And who typed all this?

16 A. Me.

17 Q. You yourself?

18 A. Me.

19 Q. You sit at the typewriter or
15:21 20 computer and read and make your summaries?

21 A. Exactly.

22 (Deposition Exhibit 11
23 was marked.)

24 Q. (By Mr. Schwartz) I'm going to
15:22 25 hand you Elliott 11. On page 2 right in the

17:22 1 middle of the page --

2 A. Hang on just a second, please.

3 Q. I'm sorry.

4 A. This one is out of order, if it
15:22 5 matters.

6 Q. Are all the pages there, the best
7 you can tell?

8 A. Yes.

9 Q. Look at page 2, wherever page 2
15:23 10 is.

11 A. All right.

12 Q. You see in the middle of the page
13 there's some handwritten word there?

14 A. "Expand."

15:23 15 Q. And just down from there the next
16 full paragraph says "Suggest that incidence of
17 lung cancer can be reduced through public
18 awareness"?

19 A. Uh-huh.

20 Q. It "Does not say awareness of
21 what"?

22 A. Right.

23 Q. Why did you put that "Does not say
24 awareness of what" in there?

25 A. Just to remind myself that it did

15:23 1 not say awareness of what.

2 Q. Were you surprised that it didn't
3 or did that not surprise you?

4 A. I suppose that had I been writing
15:23 5 that document I would have been more specific
6 in terms of what awareness meant.

7 Q. Well, when you read that what did
8 it mean to you, that the incidence of lung
9 cancer can be reduced through public
15:24 10 awareness?

11 A. I don't know. I suppose. They
12 were not very specific. But I'm not sure what
13 it was that they meant that we were to become
14 aware of.

15:24 15 Q. Well, when they say reduce through
16 public awareness, what did that phrase mean to
17 you through public awareness?

18 A. Well, it could have -- it could
19 have meant that there are different kinds of
15:24 20 sources of this thing. I just didn't know.
21 It was too vague for me to be very happy with
22 it.

23 Q. Back on page 4, what does the
24 handwritten part say?

15:24 25 A. "Government and private."

15:24 1 Q. Government and private?

2 A. Yes.

3 Q. And what relevance does that have
4 to the Texas State Health Plan for 1985?

15:25 5 A. It simply meant that this was a
6 consortium of both governmental and private
7 organizations that were represented there.

8 Q. And did that make a difference to
9 you that there was some private organizations
15:25 10 that had input into the Texas State Health
11 Plan of 1985?

12 A. I don't know that it did. It's
13 just that I -- as I went back and reread this
14 that I thought that information was something
15:25 15 I wanted to have.

16 Q. There's a document that you may
17 have closer to you that's not in this stack
18 called Summary of Tobacco Taxation and
19 Regulation. Do you have that over there?

15:26 20 A. Yes.

21 Q. What exhibit number is that?

22 A. 5.

23 Q. Let's look at Exhibit 5, please.
24 You stated earlier that this is, in fact, a
15:26 25 summary that was compiled by you?

15:26 1 A. That's correct.

2 Q. From the information that was
3 contained in this big stack that is Exhibit 6?

4 A. Exhibit 6.

15:26 5 Q. Is that right?

6 A. That's correct.

7 Q. It's a summary?

8 A. Yes.

9 Q. Back on page 3 under -- at the
15:27 10 very bottom, 42nd legislature, it says "one
11 bill introduced to repeal cigarette tax." Do
12 you know --

13 A. Wait a minute. What page are you
14 on?

15:27 15 Q. On page 3. There's --

16 A. No. I'm sorry. The copy I have
17 it's the top of the next page. But it's "42nd
18 Legislature, 3rd Called Session."

19 Q. 42nd, the page before.

15:27 20 A. Well, this one just printed up
21 differently.

22 Q. All right. One bill introduced to
23 repeal cigarette tax?

24 A. Uh-huh.

15:27 25 Q. Is that what it says underneath

15:27 1 yours?

2 A. That's correct.

3 Q. Do you know who authored that
4 bill?

15:27 5 A. No. It's in the summary.

6 Q. Can you look in there and tell me,
7 see if you can find it?

8 MR. SCHWARTZ: Is that the
9 one we --

15:28 10 MR. MacRAE: Two things put
11 together?

12 MR. SCHWARTZ: Yeah.

13 MR. MacRAE: You want him to
14 look at that rather than --

15:28 15 MR. SCHWARTZ: No. That's
16 just his summary. I would like to know the
17 exhibit number.

18 MR. MacRAE: He's looking at
19 his original.

15:28 20 A. Third called session. Farmer.

21 Q. (By Mr. Schwartz) Okay. You've
22 not done any investigation into that
23 particular piece of legislation beyond what
24 you're looking at there?

15:29 25 A. No.

15:29 1 Q. Okay. Would you look back -- I'm
2 going to give you Exhibit 5 because it's got
3 the same order as the one I'm looking at.
4 Would you look at page 5, please.

15:29 5 A. Okay.

6 Q. Down next-to-the-last entry under
7 the 52nd Legislature --

8 A. Uh-huh.

9 Q. -- at the end of the second line
15:30 10 underneath there it just says "minor." What
11 does that mean?

12 A. I don't know. I don't remember
13 why I put that in there. Oh, I think what
14 that meant was -- yeah. That it represented a
15:30 15 minor adjustment in the way that cigarette tax
16 would be collected.

17 Q. Back on page 7 under the 62nd
18 Legislature --

19 A. Okay.

15:30 20 Q. -- you've got some bold underlined
21 parenthetical.

22 A. I see it.

23 Q. Read that for us, please.

24 A. HB13 -- the whole thing or just
15:30 25 that part?

15:30 1 Q. The whole parenthetical.

2 A. "HB1324 and SB36, both of which
3 failed was first" -- should have been
4 attempted at healthcare recovery bill. "Would
15:31 5 have allowed recovery from cigarette producers
6 of medical expenses expended in the care and
7 treatment of patients with cigarette-induced
8 lung cancer."

9 Q. And where did you come up with
15:31 10 that information from?

11 A. Out of this summary.

12 Q. Was it stated in the summary or is
13 that your --

14 A. I don't remember if it was or not.

15:31 15 Q. Would you look for us, please.

16 A. Where are we? The 62nd?

17 Q. 62nd, yes, sir.

18 A. Regular -- give me those bill
19 numbers. House bill 1324. That is in the
15:32 20 text for HB1324 on page 53 of this list.

21 Q. Okay. Throughout this summary you
22 were using the word "regulation" and then at
23 about the 65th legislature you start using the
24 word "anti-smoking." Was that reflected in
15:32 25 the bulk of material that you received and

15:32 1 reviewed or was that editorial change that you
2 made?

3 A. That reflects the content or the
4 apparent -- the tone of some of that
15:33 5 legislation.

6 Q. I guess my point is was the word
7 "regulatory" used exclusively through let's
8 say the early '70s then all of a sudden it
9 became "anti-smoking" or were those terms that
15:33 10 you used to indicate a change in what you
11 thought you were reading?

12 A. I don't think that that was an
13 intentional change.

14 Q. All right. It was just that you
15 subjectively made but not one that necessarily
16 you saw in the exhibit?

17 A. It's not one that I -- that had
18 any significance for me.

19 Q. Do you recall it being one that
15:33 20 you read in Exhibit 6, I think the one that's
21 in your hand?

22 A. I don't know. I'll just have to
23 look. Do you want to look?

24 Q. Would you, please.

15:34 25 A. 65th legislature in '77. Well, on

7-34 1 page 62 of this long summary, one of these
2 bills, House Bill 1818, it said to add to the
3 places where possession burning tobacco
4 products or smoke from tobacco is
15:34 5 prohibited --

6 Q. Yes.

7 A. -- grocery store and nursing
8 home. And I'm sure at the time I used the
9 term "anti-smoking," I took it from that
15:35 10 language.

11 Q. So yes, it was -- you can say that
12 that was a term that you chose to insert in
13 there that wasn't necessarily contained in
14 Exhibit 6?

15:35 15 A. Say that one again.

16 Q. "Anti-smoking" doesn't appear in
17 1818, it's not there. And so if you used the
18 word "anti-smoking" it's a subjective term
19 that you've inserted in your summary to
20 describe what you were seeing in that
21 particular entry?

22 A. Yes. It was a reasonable
23 conclusion that that was --

24 Q. We've already determined that
15:35 25 you're a reasonable man, right?

15:35 1 A. Yes.

2 Q. You don't think you're
3 unreasonable?

4 A. No.

15:36 5 Q. When is it that you gave these
6 opinions that you've generated on Exhibit 1 to
7 Mr. Hull in written form?

8 A. I didn't produce these opinions in
9 written form.

15:36 10 Q. Okay. When is it that you gave
11 the information, the opinions to Mr. Hull that
12 now appear in written form on Exhibit 1?

13 A. Probably in May.

14 Q. May of this year?

15:37 15 A. This year. I can't be altogether
16 certain.

17 Q. And from the time you first gave
18 him these opinions until now, they have not
19 changed?

15:37 20 A. I don't think so.

21 MR. SCHWARTZ: What number
22 are we on?

23 THE VIDEOGRAPHER: 12.

24 MR. SCHWARTZ: 11?

15:37 25 THE REPORTER: 12.

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37 1 THE VIDEOGRAPHER: 12.

2 (Deposition Exhibit 12
3 was marked.)

4 Q. (By Mr. Schwartz) I have marked
15:37 5 as Exhibit 12, and I'm going to show it to you
6 but I need it back to read it to you, or you
7 can read it both. Have you ever seen that
8 before?

9 A. I don't remember if I've seen it
15:38 10 before or not.

11 Q. Okay. This is -- I'm going to
12 represent to you that this is the first
13 disclosure of your opinions that you would
14 render in this case. That's just a
15:38 15 representation, all right?

16 A. Okay. One that you received
17 from --

18 Q. From Mr. Hull.

19 A. Okay.

20 Q. Let's compare these two sets of
21 opinions if we could, please. What I will do
22 is I will read the opinion that's stated in
23 Exhibit 1 and I'm going to let you read the
24 opinion that's supposed to be the same opinion
25 on Exhibit 11 or 12, whatever it is -- 12.

15:39 1 The first one is "The
2 State ... has long-standing beliefs regarding
3 the potential health risks and potential
4 healthcare costs associated with tobacco."

15:39 5 Now what is the first one on there?

6 A. On here?

7 Q. Yes, sir.

8 A. "Dr. Elliott is expected to
9 testify that the State of Texas has
15:39 10 longstanding beliefs regarding the potential
11 risks of tobacco use."

12 Q. Okay. So we have new words.

13 We've got "health risks" and we've got "and
14 potential healthcare costs," right, inserted

15:40 15 in Exhibit 1, which is the full --

16 A. Different from this?

17 Q. Yes.

18 A. Yes, it's different.

19 Q. Did you have anything to do with
15:40 20 the changing of the opinion from what you see
21 in Exhibit 12 and what we see in Exhibit 1?

22 A. Not that I know of.

23 Q. What about Number 2. Would you
24 read Number 2, please.

15:40 25 A. Over here?

15:40 1 Q. Yes, sir. When I ask you to read
2 I want you to read from Exhibit 12.

15:40 3 A. One that says "Dr. Elliott is
4 expected to testify that the tobacco industry
5 does not control the political process; and
6 that anti-tobacco groups have significant
7 political impact."

15:40 8 Q. Right.

15:40 9 A. All right.

15:40 10 Q. Now, Opinion Number 8 of yours
11 says "The tobacco industry is not among the
12 top political contributors, especially when
13 compared to health-related and anti-tobacco
14 interest groups which make greater
15 contributions than does the tobacco industry."

15:40 16 A. Uh-huh.

15:41 17 Q. Did you have any part in the
18 change of the opinion on 12 to the opinion
19 that's expressed in your full disclosure on
20 Exhibit 1?

21 A. Well, I don't know if I had any
22 part or not. We have had ongoing discussions
23 about the topic. Did I help to write this
24 second item?

15:41 25 Q. Yes, sir.

15:41 1 A. No.

2 Q. You also have an opinion on there
3 that the State knew how to reduce the risks
4 but consistently under-funded those efforts.

15:41 5 A. Yes.

6 Q. I don't see that in Exhibit 1.
7 Can you show me where it is or explain why
8 it's not there?

9 A. I think that's, in part, inherent
15:42 10 in 1 and 2. I mean, for instance, one of the
11 ways to reduce the risks is raise the costs.

12 Q. But it's not stated there; is that
13 correct?

14 A. That's correct.

15:42 15 Q. Can you explain why or can you not
16 explain that?

17 A. I cannot explain why.

18 Q. There's also an opinion on
19 Number 12 that states the state recognized
15:42 20 tobacco as significant -- as a significant
21 revenue source through taxation, licensing
22 fees, and made policy choices to maintain
23 tobacco as a legal product with minimal
24 regulation as to its sale and use. Did I
15:42 25 fairly accurately read that?

15:42 1 A. Yes.

2 Q. And those opinions, while
3 expressed in part in some of the opinions on
4 Exhibit 1, may be found there but you can't
15:43 5 find that particular opinion anywhere on
6 Exhibit 1, can you?

7 A. I think it's in Item 2.

8 Q. "The State has recognized tobacco
9 as a significant revenue source." It doesn't
15:43 10 say "through taxation, licensing fees." And
11 then it goes on to say and it's "consistently
12 made the policy decision." And the original
13 Exhibit 12 says "and make policy choice." And
14 then they both say "to maintain" then it goes
15 Number 12 says "tobacco as a legal product
16 with minimal regulation as to its sale and
17 use," and then Exhibit 1 says "or raise
18 revenue through taxation and licensing fees
19 and to regulate tobacco rather than prohibit
15:44 20 it," so they really don't say the same thing.

21 A. I think they do.

22 Q. Your opinion is --

23 A. In my opinion that says
24 substantially the same thing.

15:44 25 Q. In your opinion the change is not

15:44 1 one that's worthy of mention or notation of
2 any kind?

3 A. Not significant to me.

4 Q. There's also an opinion on
15:44 5 Number 12, Exhibit 12 that says "The State has
6 done little to discourage citizens or prevent
7 minors from using tobacco." That opinion is
8 not found expressly stated in Exhibit 1, is
9 it?

15:44 10 A. In Item 5 there's "no State agency
11 responsible for restricting minor access to,
12 or use of, tobacco until 1993."

13 Q. But the opinion that's shown on
14 Exhibit 12 is not found verbatim in Exhibit 1?

15:45 15 A. It's not there verbatim.

16 Q. One of the most interesting
17 differences I see is on Exhibit 12, there is
18 an opinion that states "tobacco industry does
19 not control the political process," right?

15:45 20 A. Uh-huh.

21 Q. Is that a yes? Yes?

22 A. Pardon?

23 Q. Is that a yes?

24 A. Yes. Correct. It says

15:45 25 "Dr. Elliott is also expected to testify that

15:45 1 the tobacco industry does not control the
2 political process; and that anti-tobacco
3 interest groups have significant political
4 impact."

15:45 5 Q. All right. Those are your
6 opinions today?

7 A. Yes.

8 Q. It is not stated anywhere on
9 Exhibit 1, is it, that the tobacco industry
15:46 10 does not control the political process?

11 A. It does not say so explicitly.
12 That's correct.

13 Q. And it doesn't even say that an
14 anti-tobacco interest groups have significant
15:46 15 political impact?

16 A. That's correct.

17 Q. Do you not agree with those two
18 statements taken separately the way they're
19 written?

15:46 20 A. On Exhibit 12?

21 Q. Yes, sir.

22 A. Oh, I think it's -- I do agree
23 that the tobacco industry does not control the
24 political process. And I do agree that
15:46 25 anti-tobacco, whatever it is, have significant

15:46 1 political impact.

2 Q. Why, then, are they not included
3 in your opinions expressed in Exhibit 1?

4 A. I have no idea. I didn't produce
15:46 5 this document.

6 Q. All right. And you didn't write
7 it?

8 A. I didn't write it.

9 Q. You didn't write Exhibit 1 either
15:46 10 but you gave the information --

11 A. Verbally.

12 Q. -- to Mr. Hull.

13 A. We communicated that in
14 conversation, interview process.

15:47 15 Q. Did Mr. -- I'm sorry?

16 A. Interview.

17 Q. Did Mr. Hull tell you he had
18 already disclosed what he thought your
19 opinions would be in this case prior to you
15:47 20 giving him your opinions that are reflected in
21 Exhibit 1?

22 A. You're referring to Exhibit 12?

23 Q. Yes, sir.

24 A. I have no idea what the time
15:47 25 sequence is here, which of these came first.

15:47 1 Q. When you first met with him did he
2 tell you he had already made disclosure as to
3 your opinions?

4 A. No.

15:47 5 Q. When you gave him the information,
6 namely your opinions reflected in Exhibit 1,
7 did he then tell "you we have already
8 designated or disclosed what your opinions
9 will be" prior to you even giving this stuff
15:47 10 to him?

11 A. No.

12 Q. The last opinion I want to talk
13 about on Exhibit 12 says "the legislative
14 process would not have been materially altered
15 by any additional disclosure of information."
16 That's verbatim pretty much to Number 4 on
17 Exhibit 1?

18 A. Wait a minute. You're on 12?

19 Q. Yes, sir.

15:48 20 A. Where does it say that?

21 Q. I would have to look at it. I
22 don't have a copy of it.

23 A. Okay.

24 Q. Number 12 says "Dr. Elliott is
15:49 25 expected to testify that the legislative

15:49 1 process would not have been materially altered
2 by any additional disclosure of information
3 that the tobacco industry could have
4 supplied."

15:49 5 A. Uh-huh.

6 Q. It's the third paragraph. Is that
7 what it says?

8 A. Yes.

9 Q. And Number 4 on Exhibit 1 simply
15:49 10 states --

11 A. Wait a minute. Let me go back.

12 MR. MacRAE: I think it's
13 right there.

14 Q. (By Mr. Schwartz) The third
15:50 15 paragraph.

16 A. Okay. I'm with you.

17 Q. Exhibit 4 -- opinion 4 on
18 Exhibit 1 states "it is doubtful that the
19 legislative process would have been materially
15:50 20 altered by any additional disclosure of
21 information," which seems to be consistent to
22 that point. And then Number 4 on Exhibit 1
23 says "by the tobacco industry." However, when
24 you go back to Exhibit 12, it says "that the
15:50 25 tobacco industry could have supplied." Do you

50 1 know why those words were taken out?

2 A. No.

3 Q. Have you made any inquiry about
4 what information could have been supplied?

15:50 5 A. No.

6 Q. Did you even --

7 A. This is the first time I've seen
8 this document.

9 Q. I understand. My question is did
15:50 10 you even know that there was information that
11 the industry had that they could have supplied
12 that may have affected or may not have
13 affected the legislative process?

14 A. Purely hypothetical. Imagining
15:51 15 what might conceivably have been disclosed,
16 whether or not they had information that would
17 have affected the way we responded.

18 Q. Did you have any knowledge that
19 the tobacco industry had information that they
15:51 20 could have supplied?

21 A. No.

22 Q. Do you have any projects presently
23 in the works for Mr. Hull?

24 A. No.

25 Q. Have you been asked --

15:52 1 A. Not other than this one.

2 Q. You've not been asked to do any

3 other work?

4 A. No.

15:52 5 MR. SCHWARTZ: Pass the

6 witness.

7 MR. MacRAE: I don't have any

8 questions at this time.

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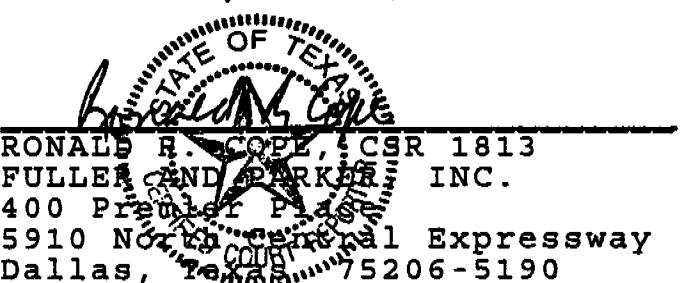
I, Ronald R. Cope, a Certified Shorthand Reporter duly commissioned and qualified in and for the State of Texas, Registered Professional Reporter and Certified Realtime Reporter, do hereby certify that there came before me on the 20th day of September at Maroney, Crowley, Bankston, Richardson & Hull, L.L.P. Located at 701 Brazos in the city of Austin, County of Travis, State of Texas, the following named person, to-wit: CHARLES P. ELLIOTT, JR., who was duly sworn to testify the truth, the whole truth, and nothing but the truth of knowledge touching and concerning the matters in controversy in this cause; and that he was thereupon examined upon oath and his examination reduced to typewriting under my supervision; that the deposition is a true record of the testimony given by the witness, and signature of the witness is to be before any notary public and returned within 30 days from date of receipt of transcript.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or

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financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 22nd day of September, 1997.



Charge for transcript and exhibits \$ _____

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